TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 205.

CAROLINE A. MOORES, PLAINTIFF IN ERROR,

vs.

THE CITIZENS' NATIONAL BANK OF PIQUA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED JULY 2, 1879.

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1 At a stated term of the circuit court of the United States within and for the sixth judicial circuit and southern district of Ohio, begun and held at the court-rooms in the city of Cincinnati on the first Tuesday of October, being the first day of that month, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the one hundred and third. Present, the honorable John Baxter and the honorable Philip B. Swing, judges.

CAROLINE A. MOORES
vs.
THE CITIZENS' NATIONAL BANK OF PIQUA. } 1734. Money.

Be it remembered that heretofore, to wit, on the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and seventy-three, came Caroline A. Moores, the plaintiff herein, by A. Taft and Sons, her attorneys, and filed in the clerk's office of the court aforesaid her certain petition against the said defendant, clothed in the words and figures following, to wit:

2 *Petition.*

Circuit court of the United States for sixth circuit & southern district of Ohio.

CAROLINE A. MOORES, PL'FF,
vs.
THE CITIZENS' NATIONAL BANK, DEF'T.

The plaintiff states that the defendant is a corporation duly incorporated by the laws of the United States; that the said defendant has its banking-house in the city of Piqua, in this State, and has its transfer office therein; that on July 15th, in the year eighteen hundred and sixty-seven, and prior to that time, G. Volney Dorsey was president and Robert B. Moores was cashier of the defendant, and were charged with the keeping of its transfer-books and the issuing certificates of ownership of its stock.

That on or about 15th day of July, A. D. 1867, while the said G. Volney Dorsey was president and the said Robert B. Moores was cashier of said defendant as aforesaid, the plaintiff purchased of the said defendant ninety-one shares of the capital stock of said Citizens' National
3 Bank of Piqua, and paid therefor in money the sum of $9,100.00, and received from said bank a certificate therefor, in the usual form of certificates of ownership of stock in said bank. Certificate was in the words & figures following, viz:

THE CITIZENS' NATIONAL BANK OF PIQUA.

[Stamp.]

No. 56.] STATE OF OHIO. [91 shares.

This is to certify that Mrs. Carrie A. Moores is entitled to ninety-one shares of one hundred dollars each of the capital stock of "The Citizens' National Bank of Piqua," transferable only on the books of the bank, in person or by attorney, on the surrender of this certificate.

Piqua, O., July 15, 1867.

(Signed) G. VOLNEY DORSEY,
President.

ROBT. B. MOORES, *Cashier.*

That the plaintiff supposed the said certificate to be, and received it as, a genuine and valid certificate for what it purported to be, and the signatures of the said president and cashier of said defendant were genuine, and in the proper handwriting of said G. Volney Dorsey as president and Robert B. Moores as cashier, and that said certificate conforms in every respect to the defendant's certificates for its stock which are admitted to be genuine, and such as the defendant has always been in the habit of issuing; that the par value of said stock was one hundred dollars per share, and its market value at the date of said certificate was at or above par.

That the defendant now refuses to recognize the plaintiff's ownership of said stock, or to pay dividends thereon, and justifies its refusal, and alleges and maintains that said stock is spurious and issued without any authority of said defendant, whereby said certificate is rendered worthless & unavailable in the hands of the plaintiff; that the plaintiff has requested the defendant to repay or reimburse her the amount of the market value of ninety-one shares of its stock at the time when plaintiff purchased the said stock and received said certificate as aforesaid, but that defendant has refused to pay the said amount, or any part thereof.

The said plaintiff, therefore, as a holder of said certificate for ninety-one shares of the stock of the said defendant, whereby it is certified in due form of law, and by its regularly appointed and elected officers, that the plaintiff was entitled to ninety-one shares of said capital stock, whereas, as it appears by defendant's present assertions that the said stock was wrongfully issued by said officers of said defendant, claims to recover the par value of said stock, viz, $9,100.00, with interest thereon, and she prays judgment therefor, together with her costs and allowances, and for such other relief as she may be entitled to.

A. TAFT & SONS, &
M. C. SHOEMAKER,
Att'ys for Pl'ff.

SOUTHERN DISTRICT OF OHIO, *ss:*

Caroline A. Moores, being duly sworn, says she is plaintiff in this action; that she has heard the above petition read and knows the contents thereof, and that the same is true to the best of her knowledge and belief.

CARRIE A. MOORES.

Sworn to before me and subscribed in my presence this 21st day of Mar., 1873.

[SEAL.]

CHARLES B. WILBY,
Notary Public, Hamilton Co., Ohio.

Which said petition was endorsed as follows, to wit:

To the clerk:

Issue summons, action for recovery of money only, am't claimed $9,100.00, with int. from July 15th, 1867.

A. TAFT & SONS, &
M. C. SHOEMAKER,
Att'ys for Pl'ff.

And thereupon there was issued out of the clerk's office of the court

aforesaid our certain writ of summons directed to the marshal of this district and against the said defendant, clothed in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

The President of the United States of America to the marshal of the southern district of Ohio, greeting:

You are hereby commanded to summon the Citizens' National Bank of Piqua, citizen of and resident in the State of Ohio, if it be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the second Tuesday in the month of April, 1873, to answer unto Caroline A.
7 Moores, citizen of and resident in the State of , in an action for the recovery of money only.

And have you then and there this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the United States, this 24 day of March, A. D. 1873, and in the 97th year of the Independence of the United States of America.

Attest:
[SEAL.] THOMAS AMBROSE, *Clerk.*

MEMORANDUM.—The plaintiff will be entitled to her judgment on the 4th Tuesday of April next.

THOMAS AMBROSE, *Clerk.*

And afterward, to wit, on the 25th day of March, in the year last aforesaid, came the marshal to whom the said writ was in form aforesaid directed, and returned the same into the clerk's office of the court aforesaid with his proceedings endorsed thereon, clothed in the words and figures following, to wit:

8 I rec'd this writ at Cin'ti, O., at 11.30 a. m. on 24th March, 1873, and served the same by copy as follows on the att'ys for def'd't: Matthews, Ramsey & Matthews, att'ys for def't.
March 25, 1873.

W. R. THRALL, *Marshall,*
By J. P. PHARES, *Dep.*

And afterward, to wit, on the 22d day of April, in the year last aforesaid, came the said defendant, the Citizens' National Bank of Piqua, Ohio, by Matthews, Ramsey and Matthews, its attorneys, and filed in the clerk's office of the court aforesaid its certain answer to the petition herein, clothed in the words and figures following, to wit:

Answer.

United States circuit court, southern district of Ohio.

CAROLINE A. MOORES, PL'FF,
against
THE CITIZENS' NATIONAL BANK, DEFENDANT.

The defendant admits that it is incorporated as alleged in the
9 petition; that it has its principal office in Piqua, in this State; that G. V. Dorsey was president and R. B. Moores cashier on

defendant, to the said certificate were genuine, and that the same conforms in every respect to the usual form of certificate by which the defendant was accustomed to evidence the ownership of stock to its stockholders.

And the plaintiff further alleges that the said ninety-one shares of stock had not been transferred to the plaintiff by the said Robert B. Moores at the time of the issuing of said certificate to the plaintiff as aforesaid, as represented by said Robert B. Moores, as cashier of said defendant as aforesaid, and that the said representations of the said Robert B. Moores, as cashier of said defendant, were false.

And the plaintiff further says that she believed that all the said representations of Robert B. Moores, cashier of the defendant as aforesaid, were true, viz, that the ninety-one shares of stock had been transferred on the books of said corporation to the plaintiff, and stood in her name as owner; that the said certificate of stock was au-
15 thorized by the said corporation, and was valid, and that she was recognized as a stockholder for said amount of stock by the defendant until the first day of January, A. D. 1873, or after that day, when she first learned that the defendant disputed the validity of said certificate of stock, denied that any transfer of stock had been made to her upon its books, and refused to recognize her as an owner of stock in said corporation.

And the plaintiff further says that after the issuing to the plaintiff of said certificate as aforesaid the defendant permitted the said Robert B. Moores to make on its transfer-book transfers of all the stock owned by him, or standing in his name as owner upon the books of said corporation, to other persons, leaving no stock on said books in the name of said Robert B. Moores to be transferred to said plaintiff, and none standing on its books in the name or to the credit of said plaintiff, and the defendant has refused and now refuses to recognize the plaintiff as owner of said stock or any part thereof or to recognize the validity of said certificate.

16 And the plaintiff says that by means of the said fraudulent conduct of the said Robert B. Moores, as officer and cashier of the defendant, in issuing said certificate for stock without a surrender of any certificate for stock represented thereby, and without any transfer to the plaintiff of any stock on the books of the said corporation or any power of attorney authorizing such a transfer, and by the negligence of the defendant in permitting said acts to be done by its said cashier and officers, the plaintiff has lost the said sum of $9,100.00 paid by her for said certificate of stock, which certificate is invalid and worthless in her hands.

Plaintiff, on the day of , 1873, requested the defendant to repay or reimburse to her said amount of $9,100.00, or to recognize the validity of said certificate of stock, and the defendant refused to pay the same or any part thereof or to recognize said stock as valid.

The plaintiff says that she has sustained the loss of said sum of ninety-one hundred dollars through the negligence of the defendant and the fraud of its agent, Robert B. Moores, as above stated,
17 to the damage of the plaintiff in the sum of $9,100.00, for which amount, with interest thereon from the day of , A. D. 1873, she prays a judgment against said defendant.

A. TAFT & SONS, AND
M. C. SHOEMAKER,
Att'ys for Plaintiff.

STATE OF OHIO,
Hamilton Co., ss:

Caroline A. Moores, being duly sworn, says that she is plaintiff in this action, that she has heard the above-amended petition read and knows its contents, and that the same is true, as she verily believes.

CAROLINE A. MOORES.

Sworn to before me, and subscribed in my presence, this 11th day of February, A. D. 1874.

[SEAL.] CLINTON KIRBY,
Notary Public for Hamilton County, Ohio.

18 And afterwards, to wit, on the 12th day of February, in the year last aforesaid, came the said defendant, by its said attorneys, and filed in the clerk's office of said court its certain motion to compel election, clothed in the words and figures following to wit:

Motion.

C. A. MOORES, PL'FF,
vs.
THE CITIZENS' NATIONAL BANK OF PIQUA, def't. } No. 1734.

Now comes the defendant and moves the court to make the following orders:

1st. To require the plaintiff to elect whether she will proceed upon the ground that she became the holder of genuine stock in defendant by virtue of her purchase from R. B. Moores, and was subsequently injured by the transfer of his shares to other persons, or upon the ground that the certificate set forth in the petition was invalid at the date of said purchase, and that the defendant is liable therefor
19 on the ground of negligence, said claims as they now appear in the petition being inconsistent and contradictory.

2d. To require the plaintiff to strike from her petition all matter relating to the alleged ownership by R. B. Moores of shares in defendant, and the subsequent transfers thereof, such matter being irrelevant.

3d. To require the plaintiff to make her petition more definite and certain by setting forth the particular act or acts, or omission or omissions of duty, upon the part of defendant, constituting negligence upon defendant's part.

MATTHEWS, RAMSEY & MATTHEWS,
Att'ys for Def't.

And afterwards, to wit, on the sixteenth day of March, in the year of our Lord one thousand eight hundred and seventy-five, an entry was made upon the journal of said court in said cause clothed in the words and figures following, to wit:

CAROLINE A. MOORES
vs.
CITIZENS' NATIONAL BANK, PIQUA. } 1734. Money.

20 *Leave to amend petition.*

On motion to the court, it is ordered by the court that the plaintiff

defendant, to the said certificate were genuine, and that the same conforms in every respect to the usual form of certificate by which the defendant was accustomed to evidence the ownership of stock to its stockholders.

And the plaintiff further alleges that the said ninety-one shares of stock had not been transferred to the plaintiff by the said Robert B. Moores at the time of the issuing of said certificate to the plaintiff as aforesaid, as represented by said Robert B. Moores, as cashier of said defendant as aforesaid, and that the said representations of the said Robert B. Moores, as cashier of said defendant, were false.

And the plaintiff further says that she believed that all the said representations of Robert B. Moores, cashier of the defendant as aforesaid, were true, viz, that the ninety-one shares of stock had been transferred on the books of said corporation to the plaintiff, and stood in her name as owner; that the said certificate of stock was au-
15 thorized by the said corporation, and was valid, and that she was recognized as a stockholder for said amount of stock by the defendant until the first day of January, A. D. 1873, or after that day, when she first learned that the defendant disputed the validity of said certificate of stock, denied that any transfer of stock had been made to her upon its books, and refused to recognize her as an owner of stock in said corporation.

And the plaintiff further says that after the issuing to the plaintiff of said certificate as aforesaid the defendant permitted the said Robert B. Moores to make on its transfer-book transfers of all the stock owned by him, or standing in his name as owner upon the books of said corporation, to other persons, leaving no stock on said books in the name of said Robert B. Moores to be transferred to said plaintiff, and none standing on its books in the name or to the credit of said plaintiff, and the defendant has refused and now refuses to recognize the plaintiff as owner of said stock or any part thereof or to recognize the validity of said certificate.

16 And the plaintiff says that by means of the said fraudulent conduct of the said Robert B. Moores, as officer and cashier of the defendant, in issuing said certificate for stock without a surrender of any certificate for stock represented thereby, and without any transfer to the plaintiff of any stock on the books of the said corporation or any power of attorney authorizing such a transfer, and by the negligence of the defendant in permitting said acts to be done by its said cashier and officers, the plaintiff has lost the said sum of $9,100.00 paid by her for said certificate of stock, which certificate is invalid and worthless in her hands.

Plaintiff, on the day of , 1873, requested the defendant to repay or reimburse to her said amount of $9,100.00, or to recognize the validity of said certificate of stock, and the defendant refused to pay the same or any part thereof or to recognize said stock as valid.

The plaintiff says that she has sustained the loss of said sum of ninety-one hundred dollars through the negligence of the defendant and the fraud of its agent, Robert B. Moores, as above stated,
17 to the damage of the plaintiff in the sum of $9,100.00, for which amount, with interest thereon from the day of , A. D. 1873, she prays a judgment against said defendant.

A. TAFT & SONS, AND
M. C. SHOEMAKER,
Att'ys for Plaintiff.

STATE OF OHIO,
Hamilton Co., ss:

Caroline A. Moores, being duly sworn, says that she is plaintiff in this action, that she has heard the above-amended petition read and knows its contents, and that the same is true, as she verily believes.

CAROLINE A. MOORES.

Sworn to before me, and subscribed in my presence, this 11th day of February, A. D. 1874.

[SEAL.] CLINTON KIRBY,
Notary Public for Hamilton County, Ohio.

18 And afterwards, to wit, on the 12th day of February, in the year last aforesaid, came the said defendant, by its said attorneys, and filed in the clerk's office of said court its certain motion to compel election, clothed in the words and figures following to wit:

Motion.

C. A. MOORES, PL'FF,
vs.
THE CITIZENS' NATIONAL BANK OF PIQUA, def't. } No. 1734.

Now comes the defendant and moves the court to make the following orders:

1st. To require the plaintiff to elect whether she will proceed upon the ground that she became the holder of genuine stock in defendant by virtue of her purchase from R. B. Moores, and was subsequently injured by the transfer of his shares to other persons, or upon the ground that the certificate set forth in the petition was invalid at the date of said purchase, and that the defendant is liable therefor
19 on the ground of negligence, said claims as they now appear in the petition being inconsistent and contradictory.

2d. To require the plaintiff to strike from her petition all matter relating to the alleged ownership by R. B. Moores of shares in defendant, and the subsequent transfers thereof, such matter being irrelevant.

3d. To require the plaintiff to make her petition more definite and certain by setting forth the particular act or acts, or omission or omissions of duty, upon the part of defendant, constituting negligence upon defendant's part.

MATTHEWS, RAMSEY & MATTHEWS,
Att'ys for Def't.

And afterwards, to wit, on the sixteenth day of March, in the year of our Lord one thousand eight hundred and seventy-five, an entry was made upon the journal of said court in said cause clothed in the words and figures following, to wit:

CAROLINE A. MOORES
vs. } 1734. Money.
CITIZENS' NATIONAL BANK, PIQUA.

20 *Leave to amend petition.*

On motion to the court, it is ordered by the court that the plaintiff

have leave to file a second amended petition herein forthwith, and the same is accordingly filed, to which the defendants, by its attorneys, except; which second amended petition is clothed in the words and figures following, to wit:

Amended petition.

CAROLINE A. MOORES, pl'ff,
vs.
THE CITIZENS' NATIONAL BANK OF PIQUA, def't. } No. 1734.

The plaintiff, by leave of court, and by way of an amended petition, states that the defendant is a corporation duly incorporated under the laws of the United States; that the defendant, from the time of its incorporation in the year 1864 to the present time, has had its banking-house in the city of Piqua, in the State of Ohio, and has had and kept its transfer-office for the transfer of its stock therein; that on the fifteenth day of July, A. D. 1867, and prior to that time, G.
21 Volney Dorsey was president and Robert B. Moores was cashier of the defendant, and that they were charged with the keeping of its transfer-books and the issuing of certificates of ownership of stock in said corporation.

That the limitation of the capital stock of said corporation was one thousand shares of one hundred dollars per share.

That soon after the creation of the corporation, and about the time of the organization of said corporation, in the year eighteen hundred and sixty-five, the entire amount of the capital stock, viz, one thousand shares, or one hundred thousand dollars, was taken, and the money paid to the corporation therefor, and certificates issued to the stockholders therefor. That the said Robert B. Moores at that time represented himself to the plaintiff as an owner of a large amount of stock in said corporation, and appeared upon the books of said corporation as the owner of more than ninety-one shares of said capital stock, of the value of $100 each share. That on the 15th day of July, A. D. 1867, while the said G. Volney Dorsey was president and the
22 said Robert B. Moores was cashier of said defendant, and a stockholder therein as aforesaid, the plaintiff purchased of said Robert B. Moores ninety-one shares of the capital stock in said corporation, and paid therefor the sum of ninety-one hundred dollars in money to him, and the said Robert B. Moores did, at the same time, as cashier and stockholder, fraudulently represent that he had, in consideration of said purchase and payment by the plaintiff, assigned and transferred upon the books of said bank said ninety-one shares of stock to the plaintiff, and thereupon the said G. Volney Dorsey, as president, and the said Robert B. Moores, as cashier of said bank, issued to the plaintiff a certificate, in the usual form of a certificate of stock in said corporation, for ninety-one shares of said stock, of the par value of $100 for each share, which certificate was in the words and figures following, viz:

THE CITIZENS' NATIONAL BANK OF PIQUA.

Stamp.]

No. 56.] STATE OF OHIO. [91 shares.

This is to certify that Mrs. Carrie A. Moores is entitled to ninety-one

shares, of one hundred dollars each, of the capital stock in the
23 Citizens' National Bank of Piqua. Transferable only on the books of the bank, in person or by attorney, on the surrender of this certificate.

Piqua, O., July 15th, 1867.

(Signed) G. VOLNEY DORSEY, *President.*

(Signed) ROBERT B. MOORES, *Cashier.*

That the plaintiff relied upon the representations of said Robert B. Moores, as cashier and officer of the defendant, that the said certificate was duly issued, and that the stock had been duly transferred by said Robert B. Moores to the plaintiff on the books of said bank, and said plaintiff relied upon said certificate of stock which she received as genuine and valid for what it purported to be, and plaintiff alleges that the signatures of the said G. Volney Dorsey, as president, and of said Robert B. Moores, as cashier of the defendant, to the said certificate were genuine, and that the same conforms in every respect to the usual form of certificate by which the defendant was accustomed to evidence the ownership of stock to its stockholders.

24 And the plaintiff further alleges that the said ninety-one shares of stock had not been transferred to the plaintiff by the said Robert B. Moores at the time of the issuing of said certificate to the plaintiff as aforesaid, as represented by said Robert B. Moores, as cashier of said defendant as aforesaid, and that the said representations of the said Robert B. Moores, as cashier of said defendant, were false and fraudulent.

And the plaintiff further says that she believed that all the said representations of Robert B. Moores, cashier of the defendant as aforesaid, were true, viz, that the ninety-one shares of stock had been transferred on the books of said corporation to the plaintiff, and stood in her name as owner, that the said certificate of stock was authorized by the said corporation and was valid, and that she was recognized as a stockholder for said amount of stock by the defendant until the first day of January, A. D. 1873, or after that day, when she first learned that the defendant disputed the validity of said certificate of stock, denied that any transfer of stock had been made to her upon its books, and refused to
25 recognize her as an owner of stock in said corporation.

And the plaintiff further says that after the issuing to the plaintiff of said certificate as aforesaid the defendant fraudulently permitted and procured the said Robert B. Moores to make on its transfer-book transfers of all the stock owned by him, or standing in his name as owner upon the books of said corporation, to the said G. Volney Dorsey, president of the said defendant, for the benefit of said defendant, leaving no stock on said books in the name of said Robert B. Moores to be transferred to said plaintiff, and none standing on its books in the name or to the credit of said plaintiff, and the defendant has refused, and now refuses, to recognize the plaintiff as owner of said stock, or any part thereof, or to recognize the validity of said certificate.

And the plaintiff says that the facts that no transfer had been made to the plaintiff on the transfer-book of the defendant at the time when said certificate of stock numbered 56 was issued and delivered to her, and that the same was not authorized by the corporation or
26 recognized by it as valid, and that said stock standing in the name of the said Robert B. Moores was transferred on the book of transfer of said defendant to the said president of said defendant,

were fraudulently concealed from the plaintiff by the defendant, through its cashier, the said Robert B. Moores.

Plaintiff further states that she was aware of no circumstances calling for inquiry on her part upon the subject until after the first day of January, A. D. 1873.

And the plaintiff says that by means of the said fraudulent conduct of the said Robert B. Moores, as officer and cashier of the defendant, in issuing said certificate for stock, without a surrender of any certificate for stock represented thereby, and without any transfer to the plaintiff of any stock on the books of the said corporation or any power of attorney authorizing such a transfer, and by the defendant so fraudulently permitting and procuring said acts to be done by its said cashier, the plaintiff has lost the said sum of $9,100 paid by her for said certi-
27 ficate of stock, which certificate is invalid and worthless in her hands.

Plaintiff, on the day of , 1873, requested the defendant to repay or reimburse to her the said amount of $9,100.00 or to recognize the validity of said certificate of stock, and the defendant refused to pay the same or any part thereof or to recognize said stock as valid.

The plaintiff says she has sustained the loss of said sum of ninety-one hundred dollars through the fraud of the defendant and its agent, Robert B. Moores, as above stated, to the damage of the plaintiff in the sum of $9,100, for which amount, with interest thereon from the day of , A. D. 1873, she prays a judgment against said defendant, or such other relief as to the court shall seem meet.

A. TAFT & SONS, AND
M. C. SHOEMAKER,
Att'ys for Pl'ff.

28 STATE OF OHIO,
Hamilton County, ss:

Caroline A. Moores, being duly sworn, says that she is plaintiff in this action, that she has heard the above amended petition read and knows its contents, and that the same is true, as she verily believes.

CAROLINE A. MOORES.

Sworn to before me and subscribed in my presence this 18th day of February, A. D. 1875.

[SEAL.] CLINTON KIRBY,
Notary Public for Hamilton County, Ohio.

And afterwards, to wit, on the 18th day of March, in the year last aforesaid, came the said defendant, by its said attorneys, and filed in the clerk's office of said court its certain motion to compel election and make more definite and certain, clothed in the words and figures following, to wit:

29 *Motion.*

CAROLINE A. MOORES, PL'FF,
against
THE CITIZENS' NATIONAL BANK OF PIQUA, def't. } No. 1734.

1. Now comes the defendant and moves the court to require the plaintiff to elect whether she will proceed against the defendant for per-

mitting genuine stock of R. B. Moores purchased by her, to be transferred to other persons, or upon the ground that the certificate issued to her was fictitious, and did not convey to her the title to any stock in defendant.

2. Defendant moves the court to require the plaintiff to make her petition more definite and certain by showing whether she became a stockholder by virtue of her contract with R. B. Moores, or whether said Moores delivered to her a false and fictitious certificate.

3. The defendant moves the court to order the plaintiff to strike from her petition, the same being irrelevant:

1. All of the 8th paragraph, beginning with the words "And
30 the plaintiff further says," and ending with the words "or to recognize the validity of said certificate."

2. All of the eleventh paragraph, beginning with the words "And the plaintiff says," and ending with the words "invalid and worthless in her hands."

3. The statements, wherever they occur, to the effect that G. Volney Dorsey was president and R. B. Moores cashier of defendant, and also the copy of the certificate issued to the plaintiff; said matters being irrelevant, argumentative, and mere matters of evidence.

MATTHEWS, RAMSEY & MATTHEWS,
Att'ys for Defendant.

And afterwards, to wit, on the 18th day of March, in the year last aforesaid, an entry was made upon the journal of said court in said cause clothed in the words and figures following, to wit:

Motion overruled.

CAROLINE A. MOORES
vs. } 1734. Money.
CITIZENS' NATIONAL BANK, PIQUA.

31 This day came the parties, by their attorneys, and this cause came on to be heard upon the defendant's motion to require plaintiff to elect and to make more definite and certain her amended petition, and was argued by counsel and submitted; on consideration whereof the court overrules said motion, to which the defendant excepts.

And afterwards, to wit, on the 18th day of March, in the year last aforesaid, came the defendant, by its said attorneys, and filed in the clerk's office of said court its certain demurrer to plaintiff's second amended petition herein, clothed in the words and figures following, to wit:

Demurrer.

CAROLINE A. MOORES
against
THE CITIZENS' NATIONAL BANK OF PIQUA.

Now comes the defendant and demurs to the second amended petition of the plaintiff, and assigns the following grounds of demurrer:

1st. The action is not brought within the statutory period
32 allowed for the bringing of such actions, to wit, the period of four years from the date of the injury alleged in said petition.

2d. Said petition does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against the defendant.

MATTHEWS, RAMSEY & MATTHEWS,
Att'ys for Defendant.

And afterwards, to wit, on the 20th day of March, in the year last aforesaid, an entry was made upon the journal of said court in said cause clothed in the words and figures following, to wit:

Demurrer overruled.

CAROLINE A. MOORES
vs.
CITIZENS' NATIONAL BANK OF PIQUA. } 1734. Money.

This day came the parties, by their attorneys, and this case came on for hearing upon the defendant's demurrer to the petition herein as amended, and was argued by counsel and submitted; on con-
33 sideration whereof the court find said demurrer not to be well taken, and overrules the same, to which the defendant excepts. And defendant has leave to file an answer within ten days.

Which said answer, filed the 24th day of March, in the year last aforesaid, is clothed in the words and figures following, to wit:

Answer.

CAROLINE A. MOORES, PL'FF.
ag'st
THE CITIZENS' NATIONAL BANK OF PIQUA, def't. } 1734.

1. Now comes the defendant and says that the plaintiff's alleged cause of action did not accrue within four years next preceeding the filing of her first amended petition or her original petition, said defendant claiming that the date of filing said first amended petition should be regarded as the date of the commencement of the action. Defendant denies that plaintiff was ignorant of the facts set forth in her petition, if said facts existed at any time after they occurred, and denies that the plaintiff was ignorant of facts which called upon her to inquire as to the
34 validity of the certificate held by her until Jan'y 1, 1873, or any other date after July 15, 1867.

2. For further answer to the said petition the defendant says that on the 15th day of July, 1867, the plaintiff, with her husband, entered into a contract with R. B. Moores, who was the brother-in-law of the plaintiff, of which the following is a true copy:

"For value received, namely, the sum of ninety-one hundred dollars, Robert B. Moores has assigned and transferred to Caroline A. Moores ninety-one shares of stock of the Citizens' National Bank of Piqua, Ohio.

"Now, it is agreed that the said Caroline A. Moores shall, upon demand by Robert B. Moores or his assigns, reassign to said R. B. Moores the said stock for the same amount; and it is also agreed that, whenever the said Caroline A. Moores shall require it, the said Robert B. Moores shall purchase the said stock for the same amount; and it is also agreed that, whenever the said Caroline A. Moores shall require

it, the said Robert B. Moores shall purchase said stock at the amount aforesaid, and pay the same to her in cash; and in the mean time it is agreed, and the said Robert B. Moores and William B. Moores do hereby guarantee and assure to said Caroline A. Moores an annual
35 dividend upon said stock of not less than ten per cent. upon the par value of said stock, namely, ninety-one hundred dollars; which guaranty shall be performed and fulfilled at the end of each year herefrom, or at the time of each dividend declared if such dividend shall be declared oftener than once a year, and all deficiencies in said dividend shall be made good at the time of such repurchase or transfer to R. B. Moores.

"In witness whereof the said Caroline A. Moores and J. B. C. Moores, her husband, and Robert B. Moores and William B. Moores hereunto set their hands, on this 15th day of July, 1867.

(Signed) "CAROLINE A. MOORES.
"J. B. C. MOORES.
"ROBERT B. MOORES.
"W. B. MOORES."

[5 c. int. rev. stamp. Hunnewell, Moores and Hukill, Cincinnati, O.]

This defendant knew nothing of said agreement and had no interest in or connection therewith. In pursuance of said agreement John B. C. Moores, the husband of the plaintiff, paid the sum of ninety-one hundred dollars unto Wm. B. Moores, his father and the father of R. B. Moores, to be used for the benefit of said Wm. B. and R. B. Moores, and it was so used. Said sum of money was the property of said
36 plaintiff. Subsequently said W. B. Moores, who had regularly paid the interest upon said sum to plaintiff, paid the said principal sum of ($9,100) ninety-one hundred dollars, whereupon said R. B. Moores became entitled to take up said paper purporting to be a certificate of stock.

3. For a third defense to the petition of the plaintiff the defendant says that on the 15th day of July, 1867, the plaintiff, with her husband, John B. C. Moores, entered into the written contract with Wm. B. Moores and R. B. Moores, which is set forth in the above second cause of defense; that in pursuance of said contract said R. B. Moores delivered to the plaintiff a paper purporting to be a certificate of defendant that plaintiff was the owner of ninety-one shares of stock in the defendant, being the paper referred to in the petition. A true copy of said paper is set forth in plaintiff's petition. In pursuance of said agreement plaintiff paid said sum of ninety-one hundred dollars. Defendant admits that R. B. Moores was its cashier at the date of said paper, and that G. Volney Dorsey was its president at said date, and that the genuine signatures of said persons appear upon said paper; but the defendant says that said paper was executed and delivered to plaintiff by said R. B. Moores without the knowledge or consent
37 of said G. Volney Dorsey or any other officer of defendant, and that neither said Dorsey or this defendant had any interest in or connection with said transaction.

Defendant further says that its entire capital stock had been taken long prior to July 15, 1867, and that transfers were being made from time to time, and that the certificates of stock required the signatures of both the president and the cashier; that the transfer-book of defendant contained printed certificates of stock, with blank spaces for the name of the holder, the number of shares, the number of the certificate, the date of issue, and the names of said president and cashier;

that the said G. Volney Dorsey, president of defendant, signed a number of said blank certificates, intending that, as persons who had purchased stock should present their certificates for transfer, the said Moores should fill up the necessary blank or blanks, append his own signature, and make the transfer, issuing the new certificate in exchange for the old one then and there to be surrendered. Said Dorsey was, in so doing, actuated by a desire to accommodate persons desiring such transfers, and who might otherwise be delayed in awaiting his
38 signature in the event that he should be absent from the banking-house when such transfers should be applied for.

Defendant says that it was upon one of the blanks aforesaid that the said R. B. Moores, in violation of his duty to this defendant, wrote the pretended certificate which he delivered to plaintiff.

Defendant further says that according to the rules and usages of defendant, at and before the date aforesaid, no one could procure a certificate of stock in defendant without the contemporaneous surrender of a certificate for an equal amount for cancellation.

Defendant further says that prior to the said 15th day of July, A. D. 1867, said R. B. Moores had been the holder of several certificates of stock in defendant, but that he had transferred said certificates to other persons, who held all of them at that date, and that, while they had not been transferred on the books of defendant, the certificates were all held by persons other than said Moores, who had paid value for the same, and none of them, nor any interest therein, were ever afterward in
39 the said R. B. Moores' possession. Said stock was held at the date aforesaid as follows: $11,500 by the Merchants' Bank of Cincinnati, $5,000 by R. Wilson Lee, and $4,000 by John W. Snarnely.

Defendant further says that up to and subsequent to July 15, 1867, said R. B. Moores had borne and did bear a good reputation for integrity.

4. Defendant denies all allegations the said second amended petition except those distinctly admitted herein.

Wherefore defendant prays to be hence dismissed with its costs in this behalf expended.

MATTHEWS, RAMSEY & MATTHEWS,
Solicitors for Defendant.

STATE OF OHIO,
County of , *ss:*

G. Volney Dorsey, on oath, says that he is president of the defendant above named, and that the allegations of the foregoing answer are true, as he verily believes.

G. VOLNEY DORSEY, *Pres't.*

Sworn to before me and subscribed in my presence this 23d day of March, A. D. 1875.

[SEAL.] S. B. GARVEY,
Notary Public.

40 And afterwards, to wit, on the 4th day of June, in the year last aforesaid, an entry was made upon the journal of said court in said cause clothed in the words and figures following, to wit:

Default set aside.

CAROLINE A. MOORES
vs. } 1734. Money.
CITIZENS' NAT'N'L BANK OF PIQUA.

On motion to the court, it is ordered that the default herein be, and

the same is hereby, set aside, and plaintiff has leave to file a reply to the first and second grounds of defense, and a demurrer to the third ground of defense set up in the answer herein, and the same are accordingly filed.

Which said reply is in the words and figures following, to wit:

Reply.

CAROLINE A. MOORES, PLAINTIFF,
vs.
CITIZENS' NATIONAL BANK OF PIQUA, DEFENDANT. } No. 1734.

First. Plaintiff, for reply to the first ground of defence in the
41 answer of the defendant, says that at and prior to the fifteenth day of July, A. D. 1867, when the said certificate of the defendant for ninety-one shares of its stock was issued, as alleged in the petition, and from that time to the present, the plaintiff was and has been a married woman, viz, the wife of John B. C. Moores, and under the disability of coverture.

And for second reply to said first ground of defence plaintiff says that said cause of action did accrue within four years next preceeding the commencement of this action.

Second. And for a reply to the second ground of defense in said answer contained the plaintiff denies that, in pursuance of said agreement, John B. C. Moores, the husband of the plaintiff, paid the sum of ninety-one hundred dollars unto Wm. B. Moores, his father and the father of R. B. Moores, to be used for the benefit of the said Wm. B. and R. B. Moores, and that it was so used, or that the said sum of money which is alleged by said defendant in said answer to be the property of the plaintiff was ever paid by said Wm. B. Moores to plaintiff, or that the said R. B. Moores ever became entitled to take up said paper purporting to be a certificate of stock.

42 Wherefore plaintiff asks judgment against defendant as before.

TAFT AND SONS, AND
M. C. SHOEMAKER,
Att'ys for Pl'ff.

STATE OF OHIO,
Clark County, ss:

Caroline A. Moores, being first duly sworn, says that she is plaintiff in above action, and that the foregoing reply is true, as she verily believes.

CAROLINE A. MOORES.

Sworn to before me and subscribed in my presence this 14th day of May, 1875.

[SEAL.] F. C. GOODE,
Notary Public.

Which said demurrer is in the words and figures following, to wit:

43 *Demurrer.*

CAROLINE A. MOORES, PLAINTIFF,
vs.
CITIZENS' NATIONAL BANK OF PIQUA, DEFENDANT. } 1734.

Plaintiff demurs to the third ground of defence in said answer con-

tained, for the reason that it does not state facts sufficient to constitute a defence.

TAFT & SONS, &
M. C. SHOEMAKER,
Att'ys for Pl'ff.

And afterwards, to wit, but on the same day, came the said defendant, by its said attorney, and filed in the clerk's office of said court its certain demurrer in the words and figures following, to wit:

CAROLINE A. MOORES, PL'FF
against } 1734.
CITIZENS' NATIONAL BANK OF PIQUA.

Defendant demurs to the first and second replies to the first
44 ground of defense, on the ground that they do not constitute good replies to said defense.

MATTHEWS, RAMSEY & MATTHEWS,
Att'ys for Def't.

And afterwards, to wit, on the 29th day of June, in the year of our Lord one thousand eight hundred and seventy-seven, an entry was made upon the journal of said court in said cause clothed in the words and figures following, to wit:

CAROLINE A. MOORES
vs. } 1734. Money.
THE CITIZENS' NATIONAL BANK OF PIQUA, OHIO.

This cause coming on to be heard upon the plaintiff's demurrer to third ground of defense contained in defendant's answer, and defendant's demurrer to plaintiff's first and second reply to first ground of defense in said answer; and having been argued by counsel and considered by the court, it is ordered that plaintiff's demurrer to the third defense be, and the same is hereby, sustained, to which defendant excepts;
45 and that defendant's demurrer to plaintiff's first reply to first defense be sustained, to which plaintiff excepts; and, finally, that defendant's demurrer to plaintiff's second reply to first defense be, and the same is hereby, overruled, to which defendant excepts. Both parties are hereby allowed thirty days to plead.

And afterwards, to wit, on the 9th day of March, in the year of our Lord one thousand eight hundred and seventy-eight, a further entry was made upon the journal of said court in said cause clothed in the words and figures following, to wit:

CAROLINE A. MOORES
vs. } 1734. Money.
CITIZENS' NATIONAL BANK OF PIQUA, O.

On motion to the court, it is ordered that the defendant have leave to file its certain amendment to its answer herein forthwith, and the same is accordingly filed.

Which amendment to answer is clothed in the words and figures following, to wit:

46 *Amendment to the answer of defendant.*

CAROLINE A. MOORES, PLAINTIFF,
vs.
THE CITIZENS' NATIONAL BANK OF PIQUA, DEFENDANT. } No. 1734.

Now comes the defendant and, by leave of court first had and obtained, files this its amendment to its answer heretofore filed, and prays that it may be received as a third cause of defense in lieu of the third cause of defense alleged in its original answer, to which demurrer has been sustained, to wit:

For a third defense to the said action the defendant says that it denies that the said G. Volney Dorsey had any connection with the transaction alleged in the petition, and denies that he issued to the plaintiff the certificate set forth in said petition, and denies that the said Robert B. Moores, as its cashier or in his official capacity, issued said certificate to plaintiff; it denies that said Robert B. Moores held any stock certificate in defendant on July 15th, 1867, or at any time thereafter; and it alleges that, according to the rules and usages of defendant,

47 no one is, and no one was at that date, entitled to receive a certificate of ownership of shares therein without the surrender of a certificate of corresponding amount for cancellation, all of which was well known to plaintiff; and the defendant generally denies all allegations of fraud or negligence in the said second amended petition made and contained.

MATTHEWS, RAMSEY & MATTHEWS,
Att'ys for Def't.

STATE OF OHIO,
Hamilton Co.:

C. B. Matthews, on oath, says that the allegations of the foregoing amendment are true, as he believes, and that he is one of the defendant's attorneys, no officers of defendant being within this county.

C. B. MATTHEWS.

Sworn to before me and subscribed in my presence this 9th day of March, A. D. 1878.

[SEAL.] E. L. DE CAMP,
Notary Public, Hamilton Co., Ohio.

48 And afterwards, to wit, on the 26th day of March, in the year last aforesaid, an entry was *was* made upon the journal of said court in said cause clothed in the word and figures following, to wit:

Default set aside.

CAROLINE A. MOORES
vs.
CITIZENS' NATIONAL BANK OF PIQUA, O., } 1734. Money.

On motion to the court, it is ordered that the default herein be, and the same is hereby, set aside, and the plaintiff have leave to file her reply herein forthwith, and the same is accordingly filed, which said reply is in the words and figures following, to wit:

Reply to the amended answer of defendant.

CAROLINE MOORES, PLAINTIFF,
vs.
THE CITIZENS' NATIONAL BANK OF PIQUA, defendant. } No. 1734.

The plaintiff, by way of reply to the third ground of defense as
49 alleged in the amended answer of defendant, wherein the said amended answer denies the allegation of the plaintiff in her petition, joins issue thereon, and wherein it alleges that according to the rules and usages of defendant no one is or was entitled to receive a certificate of ownership of shares therein without the surrender of a certificate of corresponding amount for cancellation, and that the same was well known to plaintiff, the plaintiff denies the said allegations.

ALPHONSO TAFT &
M. C. SHOEMAKER,
Att'ys for Def't.

STATE OF OHIO,
Hamilton County, ss:

Caroline A. Moores, plaintiff in this case, makes oath and says that the statements of facts in the foregoing reply are true, as she believes.

CAROLINE A. MOORES.

Sworn to before me and subscribed in my presence, this eighth day of March, 1878.

[SEAL.]

FLORIEN GIAUQUE,
Notary Public, Hamilton Co., O.

50, 51 And afterwards, to wit, on the thirteenth day of December, in the year last aforesaid, an entry was made on the journal of said court in said cause clothed in the words and figures following, to wit:

CAROLINE A. MOORES
vs.
CITIZENS' NATIONAL BANK OF PIQUA, OHIO. } 1734. Money.

This day came the parties plaintiff and defendant, by their attorneys, and (filed their written stipulation waiving a jury and) submitted this case to the court upon the issue joined. On consideration whereof the court find the issues to be in favor of the defendant, to which finding the plaintiff, by her attorneys, excepts gives notice of a motion for a new trial.

And afterwards, to wit, but on the same day, an entry was made on the journal of said court in said cause clothed in the words and figures following, to wit:

52 CAROLINE A. MOORES
vs.
THE CITIZENS' NATIONAL BANK OF PIQUA, Ohio. } 1734. Money.

This day again came the parties, by their attorneys, and thereupon this case came on to be further heard upon the motion of the plaintiff

for a new trial, and was argued by counsel and submitted. On consideration thereof the court do overrule said motion. Therefore it is considered that the defendant, the Citizens' National Bank of Piqua, Ohio, go hence without day, and recover of the plaintiff, Caroline A. Moores, their costs in this behalf expended, taxed at $, and execution is awarded therefor; to which ruling and judgment of the court the plaintiff, by her attorneys, excepts, and presents to the court her certain bill of exceptions to the finding, ruling, and judgment of the court in this case, which is allowed by the court, signed, sealed, and ordered to be made a part of the record in this case.

53 *Bill of exceptions.*

United States circuit court, southern district of Ohio, October term, A. D. 1878.

CAROLINE A. MOORES, PLAINTIFF,
vs.
THE CITIZENS' NATIONAL BANK OF PIQUA, defendant. } No. 1734.

This cause came on for trial, and the parties appeared, by their counsel, and waived the intervention of a jury, and agreed to submit and did submit to the court as all the evidence in the case following, viz:

The depositions of Robert B. Moores, G. Volney Dorsey, John B. C. Moores, Warner M. Bateman, and Franklin H. Lawson, all taken by E. L. De Camp, a notary public, with his notarial certificate, dated Feb. 5th, 1874, fastened in a bundle and marked as Exhibit A, hereto attached; also the depositions of John B. C. Moores and H. B. Olmstead, taken by said E. L. De Camp, with his notarial certificate, dated 30th day of October, 1873, and fastened together and hereto attached as Exhibit B; also the depositions of Mrs. Caroline A. Moores, the plaintiff,
54 taken before E. L. De Camp, notary public as aforesaid, with his certificate, dated 10th day of January, 1874, which deposition is hereto attached and marked Exhibit C.

This was all the evidence offered by either party.

Thereupon the court found for the defendant, to which the plaintiff excepted, and the plaintiff moved for a new trial on the ground that the finding was against the evidence and the law.

The court overruled said motion for a new trial and rendered judgment for the defendant, to all of which the plaintiff excepted and prayed this her bill of exceptions be made part of the record in this cause, which is hereby ordered to be done, at Cincinnati, O., Dec. 13, 1878.

JNO. BAXTER, [SEAL.]
Judge of the U. S. Circuit Court.

55 *Exhibit A.—(Bill of ex.)*

Deposition of sundry witnesses, taken before me, E. L. De Camp, a notary public within and for the county of Hamilton and State of Ohio, on the 14th day of January, A. D. 1874, between the hours of 8 a. m. and 6 p. m., at the office of Matthews, Ramsey and Matthews, 58 West 3rd st., Cincinnati, in said county, by consent and agreement of counsel, both counsel being present during the entire taking of the depositions.

Exhibit A.—(Bill of ex.)

ROBERT B. MOORES, of lawful age, being by me first duly cautioned, examined, and solemnly sworn, deposeth and saith as follows:

1st question. Please state your name, age, residence, and occupation.

Answer. My name is Robert B. Moores. My age is 36 years. I reside in Clarke County, Ohio, and am a farmer.

2d question. Please state if at any time you were cashier of
56 defendant. If so, when did your connection begin and end?

Answer. I was. It commenced May 1, 1867, and ended July 15, 1869.

3d question. Please give an account of the delivery by you of the paper *upon* 'porting to be a certificate for $9,100 stock of defendant.

Answer. My father, Wm. B. Moores, who had undertaken to settle the indebtedness of my brother James C. Moores, became very much involved and needed money, and my brother John B. C. Moores' wife, plaintiff in this suit, had $9,100, and John B. C. Moores, her husband, being indebted to Wm. B. Moores, was anxious he should get this money. But his wife and her mother was not willing for John to use it without some security, and he and father asked me if I could not secure it so he could get the use of it, as John would have the credit of it and use it in the firm of Hunnewell, Moores and Hukill, and at the end of his partnership, which was for five years, he could pay the money
57 back to his wife and release this certificate. Under these circumstances I issued the certificate for 91 shares of stock. I sent it to John B. C. Moores by mail from Piqua.

4th question. Where was the agreement made? Was it in writing; and who were present when it was entered into?

Answer. The agreement was in writing. It was *was* made here in Cincinnati, by Mr. Bateman; he wrote the contract out. I don't think any one was present when I signed the contract. Each signature was written separately. His wife's name was on it when I signed it. I did not sign it the day it is dated. It was after that date John was probably present when I signed it.

5th question. Who received the money?

Answer. My father, Wm. B. Moores.

6th question. What use did he make of the money, and did you receive any of it?

Answer. He used it in settling this indebtedness which he had assumed of James C. Moores, as far as it went. I did not get any of it.

58 7th question. You say that John Moores was to get the benefit of it in the firm of Hunnewell, Moores and Hukill; in what way was he to get the benefit of it?

Answer. He was indebted to Wm. B. Moores on the first of January, 1867, to the amount of over twenty thousand dollars, and father, being

in trouble and pressed for money, was afraid some of his creditors might trouble John before his partnership expired, and credited John with the $9,100 at the time this stock was given and transferred, the balance of John's indebtedness to Mrs. Elizabeth Moores, my mother. He took John's note for that balance, I think. The note for the balance to Mrs. E. Moores was afterwards changed to a note for $3,000, at three years, and three notes for $300, at 1, 2 and 3 years, being interest on the $3,000 at ten per cent. per annum, and for the balance of the indebtedness, deducting the $9,100; also the $3,000 interest was paid monthly to Mrs. Elizabeth Moores till January, 1873,

59 8th question. Was any officer of the bank other than yourself aware of this transaction at the time?

Answer. They were not, to my knowledge.

9th question. Did any officer of the bank other than yourself have any means of knowledge upon the subject at the time?

Answer. They did not; the transaction was carried on entirely in Cincinnati or Glendale; at any rate in Hamilton County.

10th question. Did this transaction, or any trace of it, appear in any book of the bank at any time?

Answer. Not that I know of.

11th question. Will you look at the stock-book now shown you, and identify the stub of the paper delivered to the plaintiff?

Answer. Well, I suppose the stub marked No. 56, with the word "destroyed" written in pencil across the face of it in my handwriting, is the stub. A copy of it is hereto attached, marked "A."

60 12th question. Were you the owner of stock in the bank at that date? If so, how much, and in what situation were your certificates?

Answer. I don't know, for the reason I left my certificates with the firm of Moores and Co., in their safe, and they used them as collaterals for firm loans.

13th question. Was John B. Moores at any time made aware of the fact that this certificate was invalid?

Answer. I don't know. He knew it was not registered upon the books of the bank, and did not appear there before my father's death, which occurred Jan'y, 1870.

14th question. When did he first know that the stock was not registered upon the books of the bank?

Answer. I don't know exactly; at the first regular time subsequent to the date of the certificate for the declaration of a dividend I told

61 him that I would draw the dividend as agreed upon verbally at the time the verbal agreement for the delivery of the stock was made, and he told me it was all right as he owed the money to his wife, he would settle the interest with her, and I was to continue to do it. I was to do it all the time. After I left the bank I asked him if he couldn't deliver up the stock; I wanted to get it and return it to the bank. He told me the stock was in Frank Lawson's hands, his wife's brother; that he would get it some time and give it to me. He gave as a reason at that time that Frank and his wife's mother were very particular about doing everything, but that he would get it at some favorable opportunity and return it to me, as it had been issued entirely for his benefit, and no value being given to me personally for it.

15th question. What became of the stock of which you were on May 1, 1867, the owner?

Answer. One hundred and fifteen shares was given to the Merchants' National Bank, at Cincinnati, in May, 1867, I think, and fifty shares to

A. G. Burt & Co., of Cincinnati—I don't know the date of that—
62 and forty shares was given to George W. Cormany, and seventy shares was given to Evans & Co., some time in the spring or summer of 1867; all of that stock, except the forty shares to Cormany, was given out by Mr. C. B. De Camp, a member of the firm of Moores & Co. I also sold outright to a Mrs. Caldwell, in Piqua, ten shares, which, upon examination of the books, shows that I parted with ten shares more than I ever owned.

16th question. In what form were the certificates that were delivered to Burt, Cormany, Evans, and the Merchants' Nat. Bank? Were they the certificates that had been issued to you, or were they new certificates, issued directly to said parties?

Answer. They were the original certificates issued to me in the transfer from Wm. & C. G. Megrue, at the time I purchased their interest in the bank.

17th question. A transfer was made to Jason Evans January 16, 1868; upon what was that made?

Answer. He sent the original certificate for 70 shares to Piqua,
63 and had the transfer made. He surrendered the old certificate, and took a new certificate. It was in May, 1867, that the old certificate was dated, I think; there were two certificates, of $5,000 each and $1,000, of C. G. Megrue's stock, for which I had never taken a certificate. This makes $11,000; and on June 11 I took a certificate for $7,000 and one for $4,000, and it was the certificate for $7,000 that was sent up to Piqua and transferred to Evans & Co. The number of the certificate was 53; the number of the Burt certificate I don't know.

18th question. Did you have any of the certificates in your possession July 15, 1867?

Answer. I don't think I did; I had left them with Moores & Co. previous to that time.

Cross-examination:

X. 19. Question. Who were the firm of Moores and Co., and where was their place of business?

Answer. Their place at that time was at No. 91 Main street, Cincinnati. The firm consisted of Robt. B. Moores, Caleb B. De
64 Camp, and Henry A. Perkins.

X. 20. Question. How were the certificates of stock of the bank usually issued, and was this certificate which was numbered 56 and delivered to the plaintiff in that form?

Answer. They were generally issued upon the surrender of the old certificate, either in person or by power of attorney, as set out on the back of the certificate. The certificate sued on is in the usual form for a new certificate.

X. 21. Question. Is there any other form of certificate of stock?

Answer. Not that I know of in this bank.

X. 22. Question. The president and cashier sign all the certificates, do they not, of stock?

Answer. They did when I was there.

X. 23. Question. Did you have any conversation with John, or with anybody on behalf of the plaintiff, in regard to the transfer of
65 this stock to the plaintiff, in which you stated that you would or had transferred the stock? State any conversation you had upon that subject, that is, the transfer of the stock.

Answer. I don't think I did, because I sent the stock by mail; I had

agreed to transfer the stock while I was down here. In pursuance of that agreement I sent the stock down here by mail, in a letter.

X. 24. Question. Was there anybody could transfer that stock but you on the books?

Answer. That would depend upon who holds the certificate.

X. 25. Question. If you held certificates of stock could anybody transfer them but you on the books?

Answer. No person could transfer my certificates but myself, or persons to whom I had given authority.

X. 26. Question. Did not you inform John, as the agent of the plaintiff, that you had stock in your name on the books?

66 Answer. I don't think John and myself had much conversation previous to the transfer of the stock, but the most of the conversation was with father on the subject; I might have merely told John that father had been talking with me in regard to securing this $9,100 to his wife so he could get the use of it, and that I consented to it; that is about the conversation that I had with John. I had no more interest in father's getting this money than he had. It was a mutual thing to relieve him in his troubles at that time.

X. 27. Question. Was there any way in which you could more strongly assure him that you had the stock than by your undertaking to transfer it to his wife?

(Question objected to by counsel for defendant.)

Answer. I don't know that there was, unless I had given him a certificate in person to have it transferred, as had been done in other cases.

67 X. 28. Question. Look at the paper now shown you, a copy of which is hereto attached, marked B; state whether the signatures are genuine, the president, Mr. Dorsey's, as well as yours.

Answer. I believe them to be; they are. It is entirely in my handwriting, with the exception of the president's signature; that is, the written part.

X. 29. Question. You have stated that you forwarded that certificate to Cincinnati, to John, by mail; did you not in that letter state that you had transferred the stock to the plaintiff?

Answer. I say that I did write I had transferred it according to the verbal agreement made previously in Cincinnati. I was made at that time to believe that I would never have to pay that stock. It was given entirely for John's accommodation.

(OBJECTION.—All of this answer following the word "Cincinnati" is objected to by the counsel for the plaintiff. A copy of the letter is hereto attached, marked "C.")

68 X. 30. Question. You have stated in your examination-in-chief that the president, Mr. Dorsey, was not advised of the transaction between you and the plaintiff, so far as the written agreement was concerned. Did you advise him of the issuing of this certificate of stock?

Answer. I did not.

X. 31. Question. Was the stock-book in the office and subject to the control and inspection of the officers, the president as well as the cashier?

Answer. Yes, sir; it was kept in the safe of the bank along with the other books.

X. 32. Question. Was this the only certificate of the number 56 that was issued?

Answer. I don't know positive of my own knowledge; I have heard

since I left the bank that there was another of the same number issued.

X. 33. Question. Did you issue any other of that number?

69 Answer. I couldn't say whether I did or did not from my memory.

X. 34. Question. Please to look at the stub No. 56 on the stock-book, and which you have stated you supposed to be stub of the certificate delivered to the plaintiff, and say whether it appears to be numbered in the proper order, as compared with those after it and before it in the book?

Answer. It seems to be numbered in the proper order as to those after it, but not as to those before, for I find number 35 after number 44; it follows 55 and precedes 57.

X. 35. Question. Is the number next preceding it in the book number 55?

Answer. Yes, sir; but it is not in my handwriting.

X. 36. Question. Is the stub preceding that number 54?

Answer. Yes, sir.

X. 37. Question. And is the number preceding that 53, and so on?

70 Answer. It is until you come down to number 45, and including that.

X. 38. Question. Is there any other number 56 in the book? Please examine the book.

Answer. Not that I can see.

X. 39. Question. Will you now state when Mr. Dorsey signed that certificate, and when you signed it; that is, No. 56, the certificate you delivered the plaintiff?

Answer. I could not say as to Dr. Dorsey; it must have been signed previously; I probably signed it the day it was dated. He might have signed it that day too for all I know now, but he did not know it was to be issued to Mrs. Carrie A. Moores.

X. 40. Question. The stock-book, you have said, was in the custody of the officers, the president and cashier; was not the transfer-book also in the custody and control of the president and cashier?

71 Answer. Yes, sir; it was kept in the same safe with the other books.

X. 41. Question. Was any other person or officer besides the president and cashier charged with the care of the transfer and stock books, and the duty of transferring stock and issuing stock certificates?

Answer. Mr. J. R. Allen was assistant cashier, and signed checks and drafts, and may have issued stock. I don't know positive, or what the by-laws say in regard to it; my impression is that he would have had the power if he chose to use it. He wrote down nearly all the transfers in the transfer-book for the stockholders to sign.

X. 42. Question. Did not you and the president exercise the power of transferring or permitting the transfer of stock upon the books, and of issuing stock certificates; and were not all the certificates of stock issued in your respictive names as president and cashier while you retained these offices respectively?

72 Answer. I don't know that all the certificates were signed by the president and myself, as cashier. It was customary when the stockholder presented a certificate and wished to transfer all or part of it to another person, he would leave the stock and get it in the after part of the day or some other time when he was in. If Dr. Dorsey was there at the time he could get his certificate immediately.

X. 43. Question. Did you ever see a certificate of stock issued while

you were cashier and Dr. Dorsey was president which was not signed by him as president and by you as cashier?

Answer. I don't know that I did, or I don't know that I didn't; as I said before, I don't know.

The further taking of these depositions was adjourned to to-morrow, Jan'y 15, 1874, at the same place, at 9½ a. m.

E. L. DE CAMP,
Notary Public.

Met pursuant to adjournment, at the same place, at 9½ o'clock a. m., Jan'y 15, 1874, when the taking of these depositions was proceeded with.

73 X. 44. Question. You have stated that the stub of certificate number 56 had written across it in pencil the word "destroyed" in your handwriting; please to state when that word was written.

Answer. I can't tell now; I should judge that it was put on after the figure "56" was written there, "56" being in ink and "destroyed" in pencil.

X. 45. Question. What was the ordinary significance of the word "destroyed" written on a stub in that way?

Answer. I should suppose it would mean that the part taken off was destroyed or of no value to any one.

X. 46. Question. The numbers appear to be written in ink, and not printed; are not the numbers written when the certificate is issued, usually?

Answer. I don't know. You will find many of them were issued by other persons. Issued very few of them.

X. 47. Question. Do you mean they were issued by other persons while you were cashier?

74 Answer. All the time I was there, Mr. J. R. Allen, who was assistant cashier, did most all the writing and entries upon the books. I attended to the other business, that is, paying out and receiving money, and I don't know how Mr. Allen numbered them.

X. 48. Question. Please look at this stub 56, and say who wrote the number "56."

Answer. I did.

X. 49. Question. Did you not write these figures when you issued the certificate?

Answer. I don't know positive now; I presume that I did.

X. 50. Question. I understand you to state that you became cashier on or about the first of May, 1867; was that the time when you became also a stockholder of the bank by purchase, the bank having been organized some years before?

Answer. Yes, sir.

X. 51. Question. Look at the stub shown you now. It is the
75 stub preceding 45, across which is written in pencil the words "blank signed by Megrue destroyed," said stub having no number; what do you understand to be the meaning of the use of the word "destroyed" in that connection?

Answer. I don't know anything about this. It was probably destroyed by Megrue before I went in there. It is in Mr. J. R. Allen's handwriting.

X. 52. Question. Was it not written, then, to explain the removal of the certificate without being used?

Answer. I don't know. I should understand the certificate was destroyed without being filled up after being signed by the president.

X. 53. Question. Now look at stub No. 53, and say whether the word "destroyed" is written in your handwriting.

Answer. It is.

X. 54. Question. Can you explain why that word was written?

Answer. On turning over to stub No. 59, I find the certificate is issued to Jason Evans, in lieu of No. 53. Copies of the stubs 53
76 and 59 are hereto attached, and marked "D" and "E."

X. 55. Question. Will you please state how much stock you purchased which stood in your name on the books of the bank when you became cashier?

Answer. I made the agreement of purchase from Mr. Wm. Megrue, some time in April, 1867, for $51,500 of the stock of the Citizens' National Bank, held by himself, his son, M. N. Megrue, and his brother, C. G. Megrue, and I received, about the first of May, $50,500; $24,000 of it was transferred to Dr. Dorsey, or his order, and he settled with Megrue for it, and $26,500 was transferred to me. The remaining $1,000, held by C. G. Megrue, I refused to settle for until the certificate was produced.

X. 56. Question. Are these books now shown you, being the stock-book and transfer-book, the only stock-book and transfer-book used by the bank while you were cashier of the bank?

Answer. I believe they are.

77 X. 57. Question. Please to take the stock-book and examine the stubs, and see which ones conveyed the stock to you in the first instance, and afterwards those by which the same stock was issued to others, and give the date and the number; also examine the transfer-book, and show the entries where the stock was transferred to you, and also the entries by which it was transferred by you to other persons, and attached copies hereto of the stubs and the transfers.

Answer. I attach a statement of the above matters to my deposition, and marked "Exhibit F."

ROB'T B. MOORES.

G. VOLNEY DORSEY, of lawful age, being by me first duly cautioned, examined, and solemnly sworn, deposeth and saith as follows:

1. Question. Please state your name, age, residence, and occupation.

Answer. My name is G. Volney Dorsey; my age is 61 years; I reside in Piqua, Ohio, and am a physician, also president of the
78 Citizens' National Bank of Piqua, the defendant.

2. Question. At what date did you become president of defendant, and from that date until July 15, 1867, who were the officers of the bank?

Answer. I became president the first of May, 1867, and from that time until July 15, 1867; the officers were C. S. Parker, vice-president, R. B. Moores, cashier, and J. R. Allen, assistant cashier.

3. Question. Did the bank at any time after you became connected with it have any of its own stock for sale or other disposition?

Answer. It did not.

4. Question. When was the original stock subscribed for?

Answer. It was all taken before the bank went into operation.

5. Question. When did the bank go into operation?

Answer. March 1st, 1865, as appears by the record.

6. Question. Where are the articles of association and by-laws?

79 Answer. I see by the original certificate of authority from the

Comptroller that said certificate is dated April 26, 1865; a copy of the articles of association I hold in my hand; a copy is hereto attached, marked "G." I hold in my hand the original by-laws, a copy of which is hereto attached, marked "H."

7. Question. When were these by-laws adopted; what changes if any have been made in them, or are they the by-laws now in force?

Answer. They were adopted before I came into the bank, and I suppose were adopted at the organization of the bank. They are the by-laws now in force; no changes have been made since I came in.

8. Question. Was the plaintiff, Caroline A. Moores, a stockholder in the bank at any time after you became president?

Answer. She was not.

9. Question. Is there anything on any of the books, or was there anything on any of the books at any time, to indicate that she was
80 or claimed to be a stockholder, or had any other interest in connection with or in relation to the bank?

Answer. There was not, and is not now.

10. Question. When and by what means were you made aware that she held or claimed to hold the certificate of stock sued on?

Answer. As to the time, I think it was about two years after R. B. Moores left the bank. The manner was accidental; John B. Moores informed a friend of mine, Wm. S. Parker, that he held such a certificate, and Parker, on returning to Piqua, asked me if such was the fact. He had met John B. Moores in Cincinnati. I then wrote to John B. Moores inquiring about the certificate; a copy of that letter is hereto attached, marked "Exhibit I." I received an answer, dated June 27th, 1872, to which I replied; a copy of the reply, dated July 5, 1872, is hereto attached marked "J."

11. Question. Where is Moores' letter of June 27th to you?
81 Answer. I think I have it; I will examine in Piqua, and if I have it I will produce it to the notary.

12. Question. Under what circumstances and upon what conditions were the officers of the bank authorized to make transfers and deliver certificates of stock from its organization until July 15, 1867?

Answer. I can only answer from the time that I went into the bank, which was May 1, 1867; from that time, there being no original stock to issue, stock was only issued on return of the old certificates. There was one case, which I have mentioned in former testimony, where Moores transferred stock to me, when he promised to return the certificates, which, he said, were in Cincinnati, and new certificates to me, without their return. That's the only case.

13. Question. State all the circumstances connected with that transfer.

Answer. That transfer was made by Moores on the ledger on which we post our transfers, embracing 185 shares, without my knowl-
82 edge, and became known to me only several weeks after it was made. It was made for the purpose of securing the bank against loss. That was in January 16, 1868. Moores was at that time largely indebted to the bank, and told me that he had made this transfer to secure the bank, through me. At a meeting of the directors, Aug. 9, 1869, after I had assumed the indebtedness of Moores to the bank, the directors approved of the transfer, a copy of which is hereto appended. The resolution appears on page 36 of the record of the proceedings of the board of directors. The copy is marked "K." We had a by-law prohibiting transfers while the stockholder was indebted to the bank;

but I having assumed Moores' indebtedness, the transfer was permitted to be made to me.

14. Question. You say that Moores stated that these certificates were in Cincinnati, and that he would deliver them to you; if not, what became of them?

Answer. He did not deliver them. 40 shares, evidenced by certificate
54, was found with George W. Cormany, who claimed to hold it as collateral for debt of Jno. W. Quarmly from Moores, which I settled,
83 and took up the certificate. Certificate 47, for 50 shares, was found with R. Wilson Lee. It had been pledged with A. G. Burt & Co., and sold by the sheriff on execution against R. B. Moores, and purchased by Lee, which I also settled and took up. Burt & Co. had delivered it to the sheriff for sale. 115 shares, evidenced by certificate 49 for 65 shares and certificate 48 for 50 shares—I think I am correct in the numbers—are held still by the Merchants' National Bank of Cincinnati as collateral for a debt of R. B. Moores. It makes 30 shares more than he transferred to me at that time.

15. Question. Are you not mistaken in supposing that the Merchants' Bank holds the above-named stock as collateral?

Answer. It was sold under a decree enforcing the pledge of the stock, and purchased by the Merchants' National Bank. I have stated previously that the directors consented to the transfer of Moores' stock to me, by resolution of date above named. The certificates have not all been issued to me. My recollection is that the certificate for the 70 shares of the Jason Evans stock was issued to me, but no other.

84 16. Question. Your signature appears to the paper presented by the plaintiff purporting to be a certificate of stock; can you explain how that signature is there?

Answer. At the request of the cashier I signed some certificates in blank in the certificate-book, as it was sometimes necessary to make a transfer of stock when I might be absent from the bank. I presume this to be one of those certificates so signed in blank; indeed, it must be so, there being no other way in which it could be done.

17. Question. Where and how was the stock-book taken care of?

Answer. It was kept in the safe of the bank. No one had access to the safe except the president and cashier and assistant cashier.

18. Question. What was the reputation of Rob't B. Moores as to integrity and capacity in July, 1867, and theretofore?

Answer. It was perfectly good, as I understood and believed, and I had entire confidence in him.

85 19. Question. What other books were kept in connection with stock transfers?

Answer. We keep a transfer-book in which transfers are entered. I have the book in my hand.

20. Question. Look in that book, from May 1, 1867, to July 16, 1867, and say who wrote the transfers.

The first is May 13th, written by J. R. Allen and signed by R. B. Moores, attorney in fact of C. G. Megrue. The certificate, in accordance, when transfers are made by attorney, is appended to the opposite page. The next is May 18, 1867, written by J. R. Allen and signed by the transferror in person, D. E. Garnsey. The next is June 19, written by J. R. Allen, signed by the transferror, Stephen Johnston, executor, in person. The next is the same day, written by R. B. Moores, signed by the transferror in person, Rob't Laudon. The next is July 15, written by J. R. Allen, signed by the transferror in person, J. Botkin. The next is August 6th.

86 21. Question. When was your attention called, for the first time to the stub marked Exhibit A; by whom; and what was said?

Answer. I can't state the time. My attention was not called to it by any one. In looking over the book I saw the stub. I asked the cashier, R. B. Moores, why it was "destroyed," and my recollection is that he told me it was injured in the filling up. That is the best of my recollection.

22. Question. The stock certificate on its face contains the words "transferrable only on the books of the bank, in person or by attorney, on the surrender of this certificate." Was the mode of transfer thus indicated in conformity to by-laws fifteen and sixteen (15 & 16)?

Answer. An examination of the by-laws will show that it is so.

23. Question. Have you been connected at any other time with any other bank or corporation, as stockholder or otherwise?

Answer. I was a stockholder in the old Piqua Bank and Piqua National Bank, and in the First National Bank of Columbus.

87 24. Question. Has your connections with the defendant made you acquainted with the rules and usages of corporations in this State touching the transfer of stock?

Answer. It has not to any extent.

25. Question. Have you ever known a corporation which did not require the surrender of and old certificate as a condition of issuing a new?

Answer. I never did.

G. VOLNEY DORSEY.

Rob't B. Moores recalled:

Rob't B. Moores stated that the statement hereto attached marked Exhibit F contained a full answer to X, 37, question. Counsel for the plaintiff thereupon asked that copies of the stubs and transfers be made by the notary. Counsel for the defendant objected, as the stock and transfer books themselves will be in evidence, and claimed that if copies of the stubs and transfers were wanted, the parties wishing them made could make them themselves, and that they ought not to be em-

88 bodied in the deposition; and the counsel for the plaintiff requested the notary to attach copies, which the notary declined to do; to which the counsel for the plaintiff objected and excepted to the ruling of the notary, the book not being in evidence.

58. X-question. Why did you not include among the certificates of stock issued by you the certificate number 56, on which this suit is founded, dated July 15, 1867?

Answer. Because I didn't consider it of any value. I never got any pay for it.

X. 59. Question. You have said that the stub number 53 was of a certificate of $7,000, issued to Evans & Co. June 11, 1867; was there any transfer of stock on the books previous to or contemporaneous with the issue of that certificate, or was there any surrender of an old certificate and transfer?

Answer. I don't know; the books will show for themselves.

X. 60. Question. You can examine the book and see if you can find there the transfer of that certificate.

89 Answer. That stock was not issued to Evans & Co. June 11, 1867. It was issued to me, and was given to Evans & Co.

X. 61. Question. Was there any transfer entered upon the books of that transaction at all?

Answer. I don't see any on the book handed me now.

X. 62. Question. You have said in your examination-in-chief that the money received from the plaintiff—that is, the $9,100—was used by your father in settling claims against the estate of Jos. C. Moores, and that none of it was used for your benefit. Was not some of the $9,100 used in payment of paper in the hands of a Covington bank, on which you and your father, Wm. B. Moores, were jointly liable?

Answer. There was some paper in the Covington bank which my brother Jas. C. Moores had endorsed "Moores, Brother & Co.," a firm which had gone out of existence the January previous, either that January or a year before, upon which I was not liable, and also
90 paper endorsed "Hunnewell, Moores & Hukill," upon which they claimed not to be liable, and my understanding was a portion of this money might have been used in this way. I did not become liable or endorse any original papers of his until 1868 or 1869. I cannot say the year exactly. Previous to the time Caleb B. De Camp went out of the firm of Moores & Co. Father was keeping his matters and John's and my own entirely separate from his own with regard to endorsements.

X. 63. Question. Were you not indebted to Wm. B. Moores at that time, and are you not indebted to his estate at present?

Answer. Not that I know of.

X. 64. Question. Were you not involved with Wm. B. Moores to a large amount in money matters at the time of the issuing of this stock?

Answer. The only matter that Wm. B. Moores and myself were connected with at that time was an indebtedness of $60,000, given in the purchase of the property corner 6th and Baymiller, which was
91 secured by mortgage jointly, and being less than half the purchase-money, and it was not until after the fire which occured in September, 1867 or 1868, that he and I became involved in any money matters mutually; and then I had to pay them all myself. They were debts incurred in rebuilding, but the insurance companies failing to pay, I had to pay the rebuilding.

X. 65. Question. Do I understand that by reason of the fire destroying the building the property was insufficient to pay the mortgage?

Answer. Yes; after I had paid the expenses of rebuilding the property was just sufficient to pay the mortgage. In fact we transferred a house to each of holders of the mortgage-notes.

X. 66. Question. Were you and your father jointly interested in that property and mortgage?

Answer. We were.

X. 67. Question. Was your father then indebted to you at the time this stock was given?

92 Answer. He was not to any extent. I collected the rents of the houses on 6th st. every month, and if he wanted a little money at any time during the month it was customary to give it to him, and it was carried on a ticket by the bookkeeper, Caleb B. De Camp, in the cash-drawer. The ticket was usually settled up every month.

X. 68. Question. How much did it cost you to rebuild those houses?

Answer. About $30,000. We only rebuilt two houses.

X. 69. Question. Who composed the firm of Moores, Brother & Co., and where did they do business?

Answer. The firm was composed of James C. & Rob't B. Moores. They carried on business, first, corner of Race and Columbia, always in Cincinnati. Robert B. Moores is myself.

X. 70. Question. If this stock was for the exclusive benefit of Wm. B. Moores, did you take security for the 91 shares; if not, why not?

93 Answer. I did not say it was for the benefit of Wm. B. Moores. I said it was for the benefit of John B. C. Moores. Father got the money, as he was owing father.

X. 71. Question. What security did you ask or obtain from either party?

Answer. I didn't ask any security from either or obtain any. I had formerly been a member of the firm of Hunnewell, Moores & Hukill myself, and the business had been very profitable.

X. 72. Question. You have stated that John agreed that you might draw the dividends on the $9,100 of stock. Was not the arrangement that you should draw the dividends of the stock and account for them to your father, to whom John was indebted, to be taken by your father as payment of the interest on so much of the debt from him to his father?

Answer. No, sir.

X. 73. Question. You have stated that he requested you to draw

94 the dividends. What was to be done with money?

Answer. I was to use it as I saw fit, as I did with anything else that was mine.

X. 74. Question. Didn't you guarantee the payment of ten per cent. on the stock, that is, that the dividends should amount to that much?

Answer. I believe that is contained in the contract.

X. 75. Question. Did you sign the contract now shown you, and which was marked "B" in John B. C. Moore's deposition heretofore taken?

Answer. Yes, sir.

X. 76. Question. Did you inform John before 1870 that the certificate of stock was invalid, or that the transfer had not been made on the books?

Answer. My recollection is that father and he had found out that this stock was not registered, either before or about the time I left the bank, which was in July, 1869, and it was at that time that he

95 promised to return me the stock. My impression is that father found it out first and told John about it.

X. 77. Question. Do you know that your father informed him of the character of the stock?

Answer. All I know is that father was at my house in Piqua about the time or shortly after I left the bank, when we talked about the matter, and I presumed he informed John when he came home. That is all I knew about it, that I recollect now.

X. 78. Question. Do you recollect receiving a letter from John dated Nov. 25, 1867, and making answer to it Nov. 26, 1867?

Answer. I received the letter and answered it. No. 91 Main street belonged to father at that time. I attach copies of John's letter of Nov. 25, 1867, and my answer Nov. 26, 1867, marked "Exhibit K" & "L." Also John's letter of Nov. 27th, marked "M;" also my letter of Nov. 29, 1867, marked "N."

X. 79. Question. In your examination-in-chief you stated that

96 John told you that he would get the certificate and deliver it up to you again. When and where did he tell you so?

Answer. My recollection is that it was after I left the bank, and it was at the store of Hunnewell, Moores & Hukill, 87 Main street.

X. 80. Question. Do you recollect calling on Mr. F. Lawson, brother of the plaintiff, who had the custody of the certificate of stock, and ask

him for it, representing or remarking that it was the property of your wife?

Answer. I don't recollect. I don't think Frank Lawson and myself ever had any conversation about the stock or anything about Carrie's affairs.

X. 81. Question. Then you did not call on Frank Lawson on this subject?

Answer. I have no recollection of doing so.

X. 82. Question. Did you issue to any person other than the plaintiffs certificates of stock similar to the one sued on?

Answer. I did, with this exception, that in all the other cases
97 either the firm with which I was connected or myself had received some benefit previously.

X. 83. Question. State to whom such certificates were issued and for how many shares respectively such certificates were issued.

Answer. I decline to answer.

X. 84. Question. State, if you can, what became of such certificates.

Answer. I decline to answer that.

X. 85. Question. Was the capital stock of the bank increased any during your term of office as cashier?

Answer. Not that I know of.

ROB'T B. MOORES.

The further taking of these depositions was adjourned to Friday, January 16th, 1874, at 2 o'clock p. m., at the same place, by consent of counsel on both sides.

E. L. DE CAMP,
Notary Public.

98 Met pursuant to adjournment, at the same place, on Friday, January 16th, 1874, at 2 o'clock p. m., when these depositions were proceeded with. G. Volney Dorsey was recalled, and continued his testimony as follows:

26. Question. What means, if any, have been open to the public from July, 1867, until date, to learn the names of the stockholders in the defendant, and the amounts of stock held by each?

Answer. Our stock-book and our dividend-book, containing the names of all the stockholders, made out every six months, when dividends were declared, were always open to inspection, and the list of stockholders was taken every year by the county auditor for assessment. The Comptroller of the Currency has a list of the stockholders of course. The law requires the list to *me* made once a year. The Comptroller's list is kept in his office at Washington. There are, therefore, three lists, one in Piqua, one in Troy, and one in Ohio.

27. Question. What other certificates, if any, were issued without authority of the bank, and what became of them?

99 Answer. Immediately after Moores left the bank, in July, 1869, I was written to by Joseph C. Butler, of the Lafayette Bank, and by B. F. Brannan, of the Franklin Bank, in regard to two certificates of stock, for $5,000 and $10,000, held by them respectively. I answered them that no such certificates had ever been issued by the bank. They were certificates issued without authority, and I had never heard of them until informed of their existence by them. Immediately, on Mr. Moores being removed from the bank, we advertised the fact, and also wrote to the several banks with which we did busi-

ness. I think those banks, the Franklin Bank and the Lafayette Bank, were among those with whom we did business. The $5,000 certificate, held by Joseph C. Butler, was arranged by Moores about one year ago. Of the other, for $10,000, held by B. F. Brannon, I have heard nothing since 1869.

28. Question. What action did the board of directors take in reference to these two certificates, and what inquiry did you make as to the existence of others?

100 Answer. At a meeting of the board of directors Aug. 9, 1869, it was ordered that the bogus stock, or the certificates, held by Jos. C. Butler and B. F. Brannan, issued to them by R. B. Moores without any authority, be advertised in the Piqua Journal, and they were so advertised. I enquired of Moores, particularly, as president of the bank, if any other similar certificates had been issued by him. He assured me there were none others.

Cross-examination:

X. 29. Question. How much was the amount of the capital stock of the bank?

Answer. One hundred thousand dollars.

X. 30. Question. Was that amount all taken?

Answer. It was all taken before the bank went into operation; that was in 1865.

X. 31. Question. There was power of increasing the capital stock to $300,000. Were there ever any steps taken to increase the capital stock?

Answer. No, sir; there were not.

101 X. 32. Question. Am I to understand, then, that these certificates which you have referred to as issued without authority, and any other certificates, if there were any issued, which would increase the capital stock beyond $100,000, would exceed the limit of capital stock as fixed by law?

Answer. That is my understanding. It is my understanding that the capital stock was $100,000.

X. 33. Question. Was there any transfer of the certificates held by Butler and Brannan, or was there any notice in the transfer-book of stock issued to them.

Answer. I never saw any.

X. 34. Question. Were the numbers of those certificates entered upon the stubs of the stock-certificate book?

Answer. I cannot now recall the numbers of those certificates. I can furnish the numbers. I think I have the certificate of Butler.

102 X. 35. Question. This certificate number 56, you will please to state whether it is in the usual form of certificates of stock.

Answer. It is.

X. 36. Question. Do the numbers of the Brannon and Butler certificates appear on the stub-book?

Answer. I cannot tell, as I do not remember the numbers.

X. 37. Question. Was any action taken by the board as regard to this certificate after it came to your knowledge?

Answer. I presented the matter to the board and they ordered me to consult our attorney, which I did, and he thought it unnecessary to advertise it.

X. 38. Question. What was the substance of the advertisement, as you did make it, in regard to the other two certificates?

Answer. As nearly as I recollect, about the same as what is contained in the order of the board of directors of Aug. 9, 1869.

103 X. 39. Question. On the 16th of January, 1868, when, as appears by the transfer-book, there was transferred to you by R. B. Moores 185 shares of stock, had he that amount of stock in his name on the books?

Answer. I have stated already that that transfer was made without my knowledge, and only became known to me some time afterwards. I think that amount of stock did appear in his name on the books at that time.

X. 40. Question. Were the certificates representing it surrendered at the time this transfer took place, or were they left outstanding?

Answer. I have already answered that question.

X. 41. Question. Was this transfer of 185 shares carried into the stock-ledger?

Answer. My recollection is that it appears on the stock-ledger in the handwriting of R. B. Moores. The stock-ledger has not been altered.

X. 42. Question. Please state whether by the resolution of
104 Aug. 9, 1869, affirming and approving the transfer of the 185 shares of stock to you, did increase nominally the stock of the bank beyond the $100,000.

Answer. The certificates of stock have not been issued to me, and consequently the amount of stock so far as shown by the certificates is not increased beyond one hundred thousand dollars. I will just state that it was afterwards found in adding up the transfers made by Moores, that he had exceeded his stock ($1,000) one thousand dollars.

G. VOLNEY DORSEY.

The further taking of these depositions was adjourned, by consent of counsel on both sides, to Feb'y 4, 1874, at 12 o'clock, at the same place.

E. L. DE CAMP,
Notary Public, Ham. Co., O.

Met pursuant to adjournment, at the same place, on Wednesday, February 4th, 1874, at 12 o'clock m., when the taking of these depositions was proceeded with.

JOHN B. C. MOORES was recalled and examined by counsel for plaintiff.

105 JOHN B. C. MOORES, of lawful age, being by me first duly cautioned, examined, and solemnly sworn, deposesand says as follows:

1st question. Please to state whether or not it was at your instance that the written contract of 15th of July, 1867, was entered into, and for whose benefit the money of your wife went.

Answer. It was at the instance of W. B. and R. B. Moores, and the money went for their benefit.

2d question. What, if any, part of said money was received by Hunnewell, Moores and Hukill?

Answer. Not a cent.

3d question. Did R. B. Moores, after leaving the Citizens' National Bank of Piqua, request you to get and return this stock held by your wife to him, and, if so, what was your reply? And did you at any time admit to him that the transaction was for your benefit?

Answer. I never had any such conversation as R. B. Moores
106 sets forth in answer to Question No. 14 of his deposition. The

only thing that was ever said or written about it was at one time Robert wrote me and wanted me to have the bank stock surrendered and take a mortgage on 91 Main street for a like amount. His letter and my answer were attached to his deposition. I never did admit to him that the transaction was for my benefit. He never asked me to return the stock, except in the letter aforesaid, that I remember of.

4th question. How much stock did Robert tell you he had in the bank at or about the time he issued this certificate to your wife?

Answer. Two hundred and seventy-five shares.

5th question. What, if anything, did you or your wife know of any indebtedness of R. B. Moores to the Citizens' National Bank of Piqua at the time of the purchase of this stock?

Answer. We didn't know of any.

6th question. State what you know of the pecuniary relations of
107 R. B. Moores and Wm. B. Moores, your father, at or about the time of this transaction.

Answer. I know that they were involved in business together, and a large amount of the business paper that father got a hold of was passed to R. B. Moores; and how he used them I don't know. I know that Robert received from father one note of mine for $3,000, and all the paper that father received for his interest in retiring from the firm of Hunnewell, Moores and Hukill. I attach here a letter of Robert B. Moores, marked Exhibit O.

7th question. Please to explain what was done with your indebtedness to your father, and whether it appeared in your administration account, and, if not, why not?

Answer. I will here give a full statement of my indebtedness, and how it was transferred: Jan'y 1st, 1865, W. B. Moores advanced or *or* loaned me eleven thousand five hundred dollars ($11,500), to buy an interest in the firm of Hunnewell, Moores and Hukill; July 1st,
108 1865, I paid him interest $575, also $1,500, on loan, thereby reducing it to ten thousand dollars; March 20th, 1865, W. B. Moores loaned me $4,000, to buy additional interest, the loan being now $14,000; July 1, 1866, paid the interest; Sept. 1, 1866, paid $1,000 on the loan, thereby reducing it to $13,000; Jan'y 1, 1867, paid the interest on the loan; July 1, 1867, paid the interest; Jan'y 1, 1868, paid interest on loan, namely, interest on $13,000 for six months, at ten per cent., $650, less 10% on amount due Carrie A. Moores on bank stock from July 15, 1867, five months and fifteen days, at ten per cent., $417.08—balance due W. B. Moores, $232.92; July 1, 1868, original loan, $13,000, with interest due to date, $232.92, with amount loaned additional, $8,436.53, making total indebtedness $21,669.45; and July 1, 1868, gave notes on the order of E. Moores, at the request of W. B. Moores, at five years after date, with no interest, equal to the amount of the bank stock; another note for the balance of my indebtedness, $12,569.45, to order of W. B. Moores, payable five years after date, with interest at 10 per cent., payable monthly. This settlement was made in this way at W. B. Moores request, as he found at that time he
109 and Robert would be compelled to use my paper either for collateral or to raise money with, and the $9,100 note, it was understood, should be laid aside for mother. March 1, 1868, W. B. Moores surrendered the note for $12,569.45, and I gave notes, one to W. B. Moores for $3,000, this date, payable 3 years after date, which he passed over to R. B. Moores; and I also gave a note at this date to order of E. Moores for $9,569.45, at five years, with interest payable monthly. This note, with the $3,000 note, makes the amount of the note surren-

dered. In my deposition I stated that the $9,100 note was given to the order of W. B. Moores, but I find from my book in which I kept my account of loans and interest that such was not the case, and I now offer the foregoing as the whole statement of all the notes that I gave that I have any recollection of.

Cross-examination:

X. 8. Question. Are you able to state the precise date of your father's death?

Answer. W. B. Moores died January 27, 1870.

X. 9. Question. What is your best recollection as to the date
110 which your father told you this stock was probably fictitious?

Answer. To the best of my knowledge it was in the December preceding his death. I know it was a short time before his death. He died in January.

JOHN B. C. MOORES.

WARNER M. BATEMAN, of lawful age, being by me first duly cautioned, examined, and solemnly sworn, deposes and says as follows:

1st question. Please state your name, age, residence, and occupation.

Answer. My name is Warner M. Bateman; my age is 46 years; I reside in Glendale, Hamilton County, Ohio, and am an attorney-at-law.

2d question. Did you draft the contract now shown you, attached to the deposition of Jno. B. C. Moores, and marked Exhibit B?

111 Answer. It is in my handwriting, and prepared by me as the attorney of Mrs. Caroline A. Moores.

3d question. State what you know in regard to the money that passed at the time of this contract, and whose fund it was.

Answer. Some considerable time previous to this I had been employed by Frank Lawson, on behalf of his sister, Caroline A. Moores, to foreclose a mortgage upon property of Jno. W. Caldwell, for an amount, interest and all, near the sum described in the paper. Shortly previous to the execution of this paper, the exact time I am not able to state, I realized the amount of the mortgage, which was, as near as I can remember without having the papers before me, between $9,000 and $10,000. The money was paid to me, and I drew a check to the order of Mrs. Moores for the amount to which she was entitled. After delivering the check to J. B. C. Moores, for his wife, I think on the same day, Mr. Lawson came to me in some excitement and complained of my paying the money to Mrs. Moores instead of to himself, and said he had given the claim to me to collect him-
112 self, but it belonged to his sister as a part of the estate derived from her father, and that although he was not her guardian or trustee, he had had charge of her business affairs, and was anxious to save this fund from passing into the hands of W. B. Moores, then in embarrassed circumstances, and desired to save and secure it for her own use. I told him the check was payable to his sister's order. Very shortly afterward Mr. Lawson returned to me and said that it was all right, and, in substance, that satisfactory arrangements were made to secure the fund to his sister. What time elapsed between this conversation and the making of this agreement I do not remember.

4th question. Please to state what, if any, representations were made in your hearing, at or about the time of your preparing that contract, by R. B. Moores, as to his having and owning stock in the Citizens' National Bank of Piqua.

Answer. I can't recall any particular interviews or conversations

held. At that time I was acting as the attorney in general busi-
113 ness of Mr. W. B. Moores, and also of Robert Moores, and I can only give my recollection of the statements made upon which this transaction was founded, without being able to give time or place. I understood, and that is my impression as to the representations made, that Robert B. Moores held stock in the Citizens' National Bank of Piqua; in fact, that, in connection with Dr. Dorsey, he was a large stockholder in that bank, one of its officers, and then a resident of Piqua. I supposed at the time that he was dealing with his own stock, and believed the transfer to be an ample security. My impression is that he represented the stock as being worth more than the amount for which he sold it, and for that reason reserved the privilege of repurchase.

(All of the foregoing objected to by counsel for defendant as irrelevant and incompetent.)

X. 5. Question. When did you first learn that the certificate of stock was bogus?

Answer. I do not recollect, but I think long afterwards. Dr.
114 Dorsey explained to me that Mr. Moores had issued, without authority and fraudulently, as cashier, a large amount of stock. I am not sure that I ever heard that the stock issued to Mrs. Moores was fraudulent until since I was spoken to about this suit; if I ever heard anything said about it, it has passed out of my mind.

WARNER M. BATEMAN.

FRANKLIN H. LAWSON, of lawful age, being by me first duly cautioned, examined, and solemnly sworn, deposes and says as follows:

1. Question. Please state your name, age, residence, and occupation.

Answer. My name is Franklin H. Lawson; age is 39 years, and am a merchant; reside 407 West 6th st., in this city.

2. Question. It has been stated that you were the custodian of the paper purporting to be a certificate in favor of your sister, Mrs.
115 C. A. Moores, for shares in the defendant; when did you first learn that the bank claimed that said certificate was not valid?

Answer. I was custodian for the paper, but my knowledge about any trouble about it is within the last year.

X-question 3. Please to state if you was agent for your sister in taking care of that fund before as well as after the issuing of that certificate.

Answer. I presume I was.

FRANKLIN H. LAWSON.

I, E. L. De Camp, a notary public within and for the county of Hamilton and State of Ohio, do hereby certify that Robert B. Moores, G. Volney Dorsey, John B. C. Moores, Warner M. Bateman, and Franklin H. Lawson were by me severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed as above set forth were reduced to writing by myself, in the presence of the witnesses respectively, and were
116 respectively subscribed by the said witnesses in my presence, and were taken at the office of Matthews, Ramsey and Matthews, in Cincinnati, Hamilton County, Ohio, and were begun on the 14th day of January, A. D. 1874, and continued from time to time by adjournment as above stated; that counsel for both parties were present during the entire taking of the depositions; that I am not counsel, relative, or attorney of either party or otherwise interested in the event of this suit.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal this 5th day of February, A. D. 1874.

[SEAL.] E. L. DE CAMP,
Notary Public, Hamilton County, Ohio.

EXHIBIT A.

Certificate No. 56.

[shares.

18 .

To

$]

Received the above certificate.

Transferred.
Destroyed.

117 EXHIBIT B.

[Shield.]

THE CITIZENS NATIONAL BANK OF PIQUA,

No. 56.] STATE OF OHIO. [91 shares.

[American eagle.]

[25 cent internal revenue stamp, cancelled.]

This is to certify that Mrs. Carrie A. Moores entitled to ninety-one shares, of one hundred dollars each, of the capital stock of the Citizens' National Bank of Piqua, transferable only on the books of the bank, in person or by attorney, on the surrender of this certificate.

Piqua, O., July 15, 1867.

G. VOLNEY DORSEY, *President.*
ROBERT B. MOORES, *Cashier.*

Shares, $100 each.

118 (Exhibit B endorsement:)

For value received, hereby sell, transfer, and assign to the shares of stock within mentioned, and authorize to make the necessary transfer on the books of the bank.

Witness my hand and seal this day of , 186 .

Witnessed by—

[SEAL.]

119 EXHIBIT C.

CITIZENS NATIONAL BANK OF PIQUA,
Piqua, O., July 15, 1867.

JOHN: Herewith I hand you the stock transferred to Carrie. I don't know what day I will be down, and you can keep the contract there

and I will sign it the first time I am down. I will have to take a receipt for the stock from father to file with my papers, to show where the stock is gone to. All well; may be down any day.

Y'rs,

R. B. MOORES.

EXHIBIT D.

Certificate No. 53.

[70 shares.

JUNE 11, 1867.

To R. B. MOORES.

$7,000.]

Received the above certificate.

Transferred.
Destroyed.

120 EXHIBIT E.

Certificate No. 59.

[70 shares.

SEPT. 4, 1867.

To JASON EVANS.

$7,000.]

Rec'd the above certificate.

Transferred.
Given in place of No. 53.
Destroyed.

121 EXHIBIT F.

The stock of Megrue to me is conveyed by certificate № 45, 46, 47, & 48, cash, for 5,000 doll's, and № 49 for 6,500 dollars, making 26,500 doll's all that was delivered at time of assuming duties as cashier, on June 11th, 1867. When C. G. Megrue had delivered his 1,000 doll's of stock I surrendered numbers 45 & 46, for 5,000 doll's each, and added C. G. Megrue's 1,000 stock to it, and took certificate № 53, for 7,000 dollars, and № 54, for 4,000 doll's, making 11,000 doll's; certificate № 53, for 7,000 doll's, was given to Mess. Evans & Co., and was surrendered and a new certificate, № 59, issued to Jason Evans for same amount, which certificate was settled and taken up by Dr. Dorsey, direct from Evans to Dorsey; certificate № 54 was given to Mr. Geo. W. Cormany, and was paid and taken up also by Dr. Dorsey, direct from Cormany to Dorsey. Of the other original issue of certificates to me, consisting of 2 for 5,000 doll's each and one for 6,500 doll's, one of the certificates for 5,000 doll's, number 47, was given to A. G. Burt & Co., and by them sold to R. W. Lee, and by him sold direct to Dr. Dorsey; the remaining 5,000 doll's
122 certificate, number 48, and 6,500 dollar certificate, number 49, was given to Merchants' National Bank of Cincinnati, and still held

by them. The original transfer of William Megrue to me is for 26,500 dollars, and dated April 30th, 1867, and the original transfer of remaining 1,000 dollars, and all I ever owned, was transferred May 13th, 1867, to me on August 6th, 1867. I transferred one thousand dollars to Mrs. Harriet Caldwell. On Jan'y 16th, 1868, I transferred 7,000 doll's to Jason Evans, the certificate for which had been held by Evans for some time previous; on January 16, 1868, I transferred to Dr. Dorsey 18,500 doll's of stock. Above are all the transfers appearing in book shown me that I can see. I have not time to make the copies of the transfers now.

123 EXHIBIT G.

G.—*Organization certificate.*

[5 c't stamp; canceled, S. J., Feb'y 17, 1865.]

Compared. F. C. C. M. G. S.

We, the undersigned, whose names are specified in article fourth of this certificate, having associated ourselves for the purpose of transacting the business of banking under the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, do make and execute the following organization certificate:

First. The name of the association shall be "The Citizens' National Bank of Piqua."

Second. The said association shall be located in the city of Piqua, county of Miami, and State of Ohio, where its operations of discount and deposit are to be carried on.

Third. The capital stock of this association shall be one hundred thousand dollars ($100,000), and the same shall be divided into one thousand shares of one hundred dollars each.

Fourth. The name and residence of each of the shareholders of
124 this association, with the number of shares held by each, are as follows:

Name.	Residence.	No. of shares.	Name.	Residence.	No. of shares.
Joshua Worley	Piqua	10	Frederick Geier	Cincinnati, O.	70
Rufus E. Reynolds	do	10	Uriah Sawyer	do	2
George D. Edge	do	10	Jessa Botkin	do	10
Amos B. Sawyer	do	10	Harvey Clark	do	35
William P. Hall	do	10	Caleb S. Parker	do	20
Samuel Wood	do	10	Joseph L. Corey	do	5
William Megrue	Milford	200	Stephen Johnston	do	10
Mark N. Megrue	Piqua	200	W. Hetherington	do	5
Conduce G. Megrue	Cincinnati	100	125 Richard Brandriff	do	10
Samuel Davis	do	10	Francis L. Morrow	do	10
Stephen Widney	do	5	Robert Landon	do	40
Aaron Friedlich	do	5	Joseph Eichelberger	Urbana, O.	5
John B. Lawder	do	10	Samuel Wallace	Piqua	11
Henry C. Landes	do	20	Daniel E. Garnsey	do	10
John Waggoner	do	30	John Rayner	do	12
Christian Foreman	do	5	Granville Moody	do	10
Henry Kitchen	do	50	Washington M. Harbaugh	do	30
			Cummings Scudder	do	10
			Total		11000

126 Fifth. This certificate is made in order that we may avail ourselves of the advantages of the aforesaid act.

In witness whereof we have hereunto set our hands this seventeenth day of February, 1865.

JOSHUA WORLEY.
RUFUS E. REYNOLDS.
GEORGE E. EDGE.
WILLIAM P. HALL.
AMOS B. SAWYER.
SAMUEL WOOD.
MARK N. MEGRUE.
WILLIAM MEGRUE.
CONDUCE G. MEGRUE.
SAMUEL DAVIS.
AARON FRIEDLICH.
HENRY C. LANDIS.
CHRISTIAN FOREMAN.
STEPHEN WIDNER.
FREDERICK GEYER.
URIAH SAWYER.
JESSE BOTKIN.
HARVEY CLARK.
CALEB S. PARKER.
JOSEPH L. COREY.
STEPHEN JOHNSTON.
W. HETHERINGTON.
R. BRANDRIFF.
127 FRANCIS L. MORROW.
ROBERT LANDON.
JOSEPH EICHELBERGER.
SAMUEL WALLACE.
DANIEL E. GARNSEY.
JOHN RAYNER.
GRANVILLE MOODY.
WASHINGTON H. HARBAUGH.
JOHN WAGGONER.
HENRY KITCHEN.
JOHN B. LAWDER.
CUMMINGS SCUDDER.

STATE OF OHIO,
County of Miami, ss:

On this 17th day of February, A. D. 1865, before me, a notary public of the county and State aforesaid, personally came Rufus E. Reynolds, George D. Edge, Amos B. Sawyer, Samuel Wood, William Megrue, Mark N. Megrue, Aaron Friedlich, Henry C. Landes, Frederick Geyer, Jesse Botkin, and Harvey Clark, and others, to me well known, who severally acknowledged that they executed the foregoing certificate for the purposes therein mentioned.

Witness my hand and seal of office the day and year aforesaid.

[SEAL OF NOTARY PUBLIC.] STEPHEN JOHNSTON,
Notary Public, Miami County, Ohio.

[5 c't stamp; cancelled, S. J., Feb'y 17, 1865.]

128 THE STATE OF OHIO,
Miami County, ss:

[NOTARY SEAL.]

On this 11th day of March, A. D. 1865, before me, a notary public of the county and State aforesaid, personally came Joshua Worley, William P. Hall, Conduce G. Megrue, Samuel Davis, Stephen Widney, John B. Lawder, John Waggoner, Christian Foreman, Henry Kitchen, Uriah Sawyer, Caleb S. Parker, Joseph L. Corey, William Hetherington, Richard Brandriff, Francis L. Morrow, Robert Laudon, Joseph Eichelberger, Samuel Wallace, Daniel E. Garnsey, John Rayner, Granville Moody, Washington H. Harbaugh, and Cummins Scudder, to me well known, who severally acknowledged that they executed the foregoing certificate for the purposes therein mentioned.

Witness my hand and seal of office the day and year aforesaid.

[SEAL OF NOTARY PUBLIC.] STEPHEN JOHNSON,
Notary Public, Miami County, Ohio.

THE STATE OF OHIO,
Miami County, ss:

On this 11th day of March, A. D. 1865, before me, a notary public of the county and State aforesaid, personally came Stephen
129 Johnston, to me well known, who acknowledged that he did execute the foregoing certificate for the purposes therein expressed and mentioned.

Witness my hand and seal of office the day and year aforesaid.

[SEAL OF NOTARY PUBLIC.] M. H. JONES,
Notary Public, Miami County, Ohio.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, ss:

I certify the foregoing to be a true copy of the original organization certificate of the , with the acknowledgements thereof, now on file and of record in this office, and of the whole of such originals, and that such originals were so filed and recorded on the 16th day of March, A. D. 1865.

CURRENCY BUREAU SEAL OF THE COMPTROLLER OF THE CURRENCY TREASURY DEPARTMENT.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, this 31st day of August, A. D. 1867.

H. R. HULBRUD,
Comptroller of the Currency.

130 EXHIBIT H.

By-laws of the Citizens' National Bank of Piqua, O., organized under the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864.

ELECTIONS.

SEC. 1. The regular annual meetings of the stockholders of this bank for the election of directors shall be held at its banking-house on the second Tuesday of January of each year, between the hours of ten and four of said day, thirty days' notice of the time and object of which meeting shall be given by the cashier of this bank, by publication in the Piqua Journal, and it shall be the duty of the board of directors, within one month previous to the time of said election, to appoint three stockholders to be judges of said election, who shall hold and conduct the same, and who shall, after the election has been held, notify, under their hands, the cashier of the bank of the result thereof, and the names of the directors-elect.

131 SEC. 2. The cashier, upon receiving the returns of the judges of election as aforesaid, shall cause the same to be recorded upon the minute-book of the bank, and shall notify the directors-elect of their election, and of the time at which they are required to meet at the banking-house of this bank for the purpose of organizing the new board. If at the time fixed for the meeting of the directors-elect there should not be a quorum present the members present may adjourn from time to time until a quorum is obtained.

SECT. 3. If, for any cause, the annual election of directors should not be held on the second Tuesday of January, the board shall order

the election to be held on some other day, of which special election notice shall be given in accordance with the requirements of the 10th section of the act, and judges appointed, and returns made, and directors-elect notified according to the requirements and provisions of sections one and two of these by-laws.

132 OFFICERS.

SECT. 4. The officers of this bank shall be a president, cashier, teller, bookkeeper, and such other officers as may be from time to time required for the prompt and orderly transaction of its business.

SECT. 5. The president shall hold his office (unless he shall resign, or become disqualified, or be removed) for the current year for which the board of which he shall be a member was elected. In case a vacancy in the board of directors or in the office of president shall occur during any current year it shall be filled by the board.

SEC. 6. The cashier and the subordinate officers shall be appointed to hold their offices respectively during the pleasure of the board.

SEC. 7. The cashier of this bank shall be responsible for all the moneys, funds, and valuables of the bank, and shall give bond, with security to be approved by the board, in the penal sum of , and conditioned for the faithful and honest discharge of his duties as
133 such cashier, and that he will faithfully apply and account for all such moneys, funds, and valuables, and deliver the same on proper demand to the order of the board of directors of this bank, or to the person or persons authorized to receive them.

SEC. 8. The president of this bank shall be responsible for all such sums of money and property of every kind as may be intrusted to his care or placed in his hands by the board of directors or by the cashier, or otherwise come into his hands as president, and shall give bond in the penalty of , with security to be approved by the board, conditioned for the faithful discharge of his duties as such president, and that he will faithfully apply and account for all sums of money and other property of the bank that may come into his hands as such president, and pay over and deliver the same to the order of the board of directors, or to any other person or persons authorized to demand or receive the same.

134 SEC. 9. The teller shall be responsible for all such sums of money, property, and funds of every description as may, from time to time, be placed in his hands by the cashier, or otherwise come into his possession as teller, and shall give bond, with security to be approved by the board, in the penalty of , conditioned for the honest and faithful discharge of his duties as teller; and that he will faithfully apply, account for, and pay over all moneys, property, and funds of every description that may come into his hands by virtue of his office as teller to the order of the board of directors aforesaid, or to such person or persons as may be authorized to demand and receive the same.

SEAL.

SECT. 10. The following is an impression of the seal adopted by the board of this bank:

135 CONVEYANCE OF REAL ESTATE.

SEC. 11. All transfers and conveyances of real estate shall be made by the bank and under the seal thereof, in accordance with the orders of the board, and shall be signed by the president or cashier.

INCREASE OF STOCK.

SEC. 12. Whenever an increase of stock shall be determined upon in accordance with the provisions of the articles of association of this bank, it shall be the duty of the board to notify all the stockholders of the same, and to cause a subscription to be opened for such increase of capital. In the increase of capital each stockholder shall have the privilege of subscribing for such number of shares of the new stock as he may be entitled to subscribe for according to his existing stock in the bank. If any stockholder shall fail to subscribe for the amount of stock to which he may be entitled, the board of directors may determine what disposition shall be made of the privilege of subscribing for the unsubscribed stock.

136 BUSINESS OF THE BANK.

SEC. 13. The bank shall be open for business from 9 o'clock a. m. to 3 o'clock p. m. of each day of the year excepting Sundays and days recognized by the laws of the State as national and religious holidays. There shall be a standing committee, to be known as the exchange committee, consisting of the president, cashier, and one director appointed by the board every six months, to continue to act until succeeded, who shall have power to discount and purchase bills, notes, and other evidences of debt, and to buy and sell bills of exchange, and who shall, at each regular meeting of the board, make a report of the bills and notes discounted and purchased by them since their last previous report.

MINUTES.

SEC. 14. The articles of association of this bank and the returns of the judges of the elections shall be recorded in the minute-book, in which shall also be recorded the proceedings of the board at all
137 regular and special sessions. The minutes of each meeting shall be signed by the president and attested by the cashier.

TRANSFERS OF STOCK.

SEC. 15. The stock of this bank shall be assignable only on the books of this bank, subject to the restrictions and provisions of the act; and a transfer-book shall be kept, in which all assignments and transfers of stocks shall be made. No transfer of the stock of this association shall be made, without the consent of the board of directors, by any stockholder who shall be liable to the association either as principal debtor or otherwise; and certificates of stock shall contain upon them notice of this provision. Transfers of stock shall not be suspended preparatory to a declaration of dividends, and except in cases of agreement to the contrary expressed in the assignments, dividends shall be paid to the stockholder in whose name the stock shall stand on the day on which the dividends are declared.

138 SEC. 16. Certificates of stock signed by the president and cashier may be issued to stockholders, and the certificate shall state upon the face thereof that the stock is transferable only upon the books of the bank; and when stock is transferred the certificates thereof shall be returned to the bank and cancelled, and new certificates issued.

EXPENSES.

All the current expenses of the bank shall be paid by the cashier, who shall, every six months, or oftener if required to do so, make to the board a detailed statement thereof.

CONTRACTS.

SEC. 17. All contracts, checks, drafts, &c., and all receipts for circulating notes received from the Comptroller of the Currency, shall be signed by the president or cashier.

139 EXAMINATIONS.

SEC. 18. There shall be appointed by the board every three months a committee whose duty it shall be to examine into the affairs of the bank, to count its cash, and compare its assets and liabilities with balances on its general ledger, for the purpose of ascertaining whether or not the books are correctly kept and the condition of the bank corresponds therewith, and whether or not the bank is in a sound and solvent condition, the result of which examination shall be reported to the board at their next regular meeting.

MEETINGS.

SEC. 19. The regular meetings of the board shall be held on the first Monday in each month, at 3 p. m. Special meetings may be called by the president or cashier.

QUORUMS.

SEC. 20. A majority of the directors, including the president, shall be a quorum to do business.

140 SEC. 21. These by-laws may be changed or amended by the vote of two-thirds of the directors.

EXHIBIT I.

G. VOLNEY DORSEY, *Pres't.* C. S. PARKER, *Vice-Pres't.* H. C. LANDIS, *Cashier.*

CITIZENS' NATIONAL BANK OF PIQUA,
Piqua, O., June 25, 1872.

JOHN B. C. MOORES, *Cincinnati, O.:*

DEAR SIR: I am informed that you hold a certificate or certificates of stock purporting to be issued by this bank. Will you be good enough to inform me the No., date, and amount of the cert'f's held by you? I never heard of this until you mentioned it to Doct. Parker.

Respectfully yours,

G. VOLNEY DORSEY, *Pres't.*

141 EXHIBIT J.

G. V. DORSEY, *President.* C. S. PARKER, *Vice-Pres't.* H. C. LANDIS, *Cashier*

CITIZENS' NATIONAL BANK,
Piqua, Ohio, July 5, 1872.

JOHN B. C. MOORES, Esq.:

MY DEAR SIR: There is no such certificate as mentioned in yours of June 27th on our books. No. 56 is marked on the stub in our certificate-book "destroyed," in R. B. Moores' handwriting. Your wife's name was never entered among our stockholders, and the certificate is a fraud. We never heard of this certificate until you mentioned it to Doct. Parker, who first informed me of it.

Very truly yours,

G. VOLNEY DORSEY.

142 EXHIBIT K.

Meeting of directors, Monday, Aug't 9th, 1869.

Present, G. V. Dorsey, P't.; C. S. Parker, V. P't.; A. B. Sawyer, H. Kitchen, H. Clark.

On motion the following resolution was adopted and ordered to be placed upon the minutes:

Whereas Rob't B. Moores, who was the owner of 275 shares of the capital stock of this bank (evidenced by certificate No. forty-seven (47), for fifty shares, dated May 2d, 1867; certificate No. forty-eight (48), for fifty shares, dated May 2d, 1867; certificate forty-nine (49), for sixty-five (65) shares, dated May 2d, 1867; certificate No. 53, for seventy (70) shares, dated June 11, 1867; and certificate No. 54, for forty (40) shares, dated June 11th, 1867), became indebted to this bank in the sum of thirty-seven thousand two hundred and forty-seven $\frac{29}{100}$ dollars ($37,247.29) and did, on the 16th day of January, 1868, trans-
143 fer one hundred and eighty-five (185) shares of said stock and on the 15th day of May, 1869, did transfer ten (10) shares of said stock on the books of this bank to G. Volney Dorsey, in consideration that said G. Volney Dorsey pay to this bank the sum of nineteen thousand five hundred dollars of said indebtedness; and whereas Jason Evans, who became the holder of seventy (70) shares of said stock issued as aforesaid, and transferred to him by said R. B. Moores on the books of this bank Sept. 4th, 1867, as per certificate No. 59, did, on the 20th day of February, 1869, transfer to G. Volney Dorsey on the books

of this bank, by his power of attorney, all his right, title, and interest, in the same. Therefore, said transfers as hereinbefore stated are approved and affirmed by the directors of this bank.

144 EXHIBIT K.

Nov. 25, 1867.

DEAR BOB: Yours of 23rd is at hand. I have intended paying you $400; Jan'y 1st, out of Carrie's money. I cannot draw it out of the store now; we are owing $22,000 and want all of this paid before the 1st of January, and we are about drawing up a new copartnership, and I cannot pay it now. When I bought the horse and carriage I did not anticipate paying until 1867. I owe father 300$ on my interest % due July 1st, which sh'd of been paid before this; I want to pay that this month, or next at the farthest. Father said something to-day about giving me a mortgage on No. 91 Main for the amount of bank stock. I must use Carrie's money as if it was nothing of mine, for such it is, and No. 91 Main now has a mortgage of $6,500 on it, and to add $9,100 is more than it is worth as the title is and I would be in a perfect "hell" between Mrs. Lawson and Frank.

Your aff. bro.,

JOHN B. C. MOORES.

145 EXHIBIT L.

CITIZENS' NATIONAL BANK OF PIQUA,
Piqua, O., Nov. 26, 1867.

JOHN: Yours of 25th to hand. It is all right, you can send me a note due Jan'y 1st, and I will use it and return you your old one. We are very short of money and I am using all I can get hold of to use building the house.

With regard to the title to 91 Main, it is as good now as any one's property, there has been a decree of court quieting the title, and if you would have Mr. Bateman to examine he will tell you so. I want father to secure you, so I will have the use of all my property myself.

You can do as you please. Maggie & Dorsey well, Lucy still sick. Will not be down Thanksgiving Day as expected.

Y'r,

ROB'T.

Tell Fred his grapes are no account, not worth a dam'—all rust & sour.

146 EXHIBIT M.

NOV. 27, 1867.

DEAR BOB: Yours of 26th is at hand. I send you a note for Jan'y 6th to take up the former one, which please return. I will try and send you some of it this year. It is about a week after the 1st of Jan'y befor' F. H. L. makes out his statement.

Lawson is very sick—teething, whooping-cough, &c. He had three fits yesterday, but to-day he is doing well.

I notice what you say about 91 Main. If father gets $15,600—mortgages of it—he is so careless that I do not believe that he would look after it or see that the taxes are paid, for he is very careless now, and if anything would happen to him we would have another case like Cald-

well. I don't mean that I would have the trouble to collect it, as of Caldwell, but would not be a flattering fix. Had I of known that you would want your stock in so short a time as 6 months, the money would of been secured otherwise. I want it secured permanently, and not have to change it every 6 months.

Yours,

J. B. C. MOORES.

147 EXHIBIT N.

[G. Volney Dorsey, president; R. B. Moores, cashier; J. R. Allen, ass't cashier. Collections carefully attended to and proceeds promptly remitted.]

CITIZENS' NATIONAL BANK OF PIQUA, O.,
Piqua, O., Nov. 29, 1867.

J. B. C. MOORES:

Your favor of the 27th, with enclosure, received.

Herewith find your note cancelled. The way father wants to secure the money is certainly permanent, and it was never understood, I think, that the stock was only to be temporary till he could secure it otherwise. However, you and him for it.

Y'r',

ROB'T.

148 EXHIBIT O.

CITIZENS' NATIONAL BANK OF PIQUA,
Piqua, O., Feb'y 25th, 1868.

JOHN: I succeeded in making the trade to-day for property I spoke of, and wish you to make me your note for 3,000$, dated 1st March, 3 years after date, and make 3 notes, each 300$, one, two, & three years after date, for int. on 3,000$ note. Make them payable to father, and have him endorse them. I can use them as cash, and can help you pay it if you find you don't make enough to pay it off yourself when due. I can get the money from Dr. Dorsey, and secure the money for you to use that length of time anyway. The balance I will fix up when down again. Please attend to this immediately, as the man (Mr. Wright, Mrs. McDonald's husband) will have deed here Saturday or Monday to close it up. All well.

Y'r',

ROB'T.

149 *Exhibit B.—Bill of ex.*

Depositions of sundry witnesses taken before me, E. L. De Camp, a notary public within and for the county of Hamilton and State of Ohio, on the 29th day of October, in the year 1873, between the hours of 8 o'clock a. m. and 6 o'clock p. m., at the office of Matthews, Ramsey & Matthews, No. 58 West Third street, in Cincinnati, in said county, pursuant to the annexed notice to be read in evidence on behalf of the defendant in the said action.

Met in pursuance of the annexed notice at the office of Matthews, Ramsey & Matthews, No. 58 West Third street, Cincinnati, Ohio, at 2 o'clock p. m. on Wednesday, October 29th, 1873, where the further taking of these depositions was adjourned, by consent of the attorneys

for all parties, to 9 o'clock a. m. to-morrow (Thursday), Oct. 30, 1873.

150 E. L. DE CAMP,
Notary Public, Hamilton County, Ohio.

Met pursuant to adjournment at the office of Matthews, Ramsey & Matthews, 58 West 3rd street, on Thursday, Oct. 30, 1873, at 9 o'clock a. m., when the taking of these depositions was proceeded with.

E. L. DECAMP,
Notary Public, Hamilton Co., Ohio.

JOHN B. C. MOORES, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposeth and saith as follows:

1. Question. State your name, age, residence, and occupation.

Ans. My name is John B. C. Moores; age, 29 years; reside at Glendale, Ohio; am a merchant by occupation.

2. Quest. What is your relationship to the plaintiff?

Ans. I am her husband.

151 3. Quest. What is your relationship to Robert B. Moores, late cashier of defendant, and what is his relationship to Dr. G. V. Dorsey, president of defendant?

Ans. I am brother of Robert B. Moores, and he is a son-in-law of Dr. G. V. Dorsey.

4. Quest. Please state the history of the transaction which resulted in the acquisition by your wife of the paper purporting to be a certificate of stock in the Piqua National Bank, which is the foundation of this suit.

Ans. Well—I have forgotten the date—my wife had collected a claim from Caldwell of $9,100. Robert and father were mixed up together in business and they wanted to get the money, and amongst other things it was proposed that she purchase 91 shares of this stock of the Citizens' National Bank from Robert. It was Robert's stock, or represented to be, which she did. The reason for buying that stock was to secure the $9,100, and leave it so that Robert, as he was cashier,

152 could hold his position, and we took a contract from him that he was to have the right to buy it back when he chose at the same price, and a guarantee with it also as to dividends.

5. Quest. Was the contract oral or written?

Answer. It was written.

6. Quest. Please produce it.

Answer. It is in the hands of my attorney. It will be produced during the examination.

7. Quest. Where was the contract made and the negotiations concerning it carried on, and who conducted the negotiations on behalf of your wife?

Ans. The negotiations were carried on and made at Cincinnati, and some letters passed between Robert and myself about it, and I conducted them on behalf of my wife. I, with the assistance of Warner M. Bateman.

8. Quest. This transaction took place in July, 1867, did it not?

153 Ans. I am not certain, but the date of the certificate of stock will show.

9. Quest. Had you or your wife had any transactions in the stock of that bank prior to that date?

Ans. No, sir.

well. I don't mean that I would have the trouble to collect it, as of Caldwell, but would not be a flattering fix. Had I of known that you would want your stock in so short a time as 6 months, the money would of been secured otherwise. I want it secured permanently, and not have to change it every 6 months.

Yours,

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[G. Volney Dorsey, president; R. B. Moores, cashier; J. R. Allen, ass't cashier. Collections carefully attended to and proceeds promptly remitted.]

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Piqua, O., Nov. 29, 1867.

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CITIZENS' NATIONAL BANK OF PIQUA,
Piqua, O., Feb'y 25th, 1868.

JOHN: I succeeded in making the trade to-day for property I spoke of, and wish you to make me your note for 3,000$, dated 1st March, 3 years after date, and make 3 notes, each 300$, one, two, & three years after date, for int. on 3,000$ note. Make them payable to father, and have him endorse them. I can use them as cash, and can help you pay it if you find you don't make enough to pay it off yourself when due. I can get the money from Dr. Dorsey, and secure the money for you to use that length of time anyway. The balance I will fix up when down again. Please attend to this immediately, as the man (Mr. Wright, Mrs. McDonald's husband) will have deed here Saturday or Monday to close it up. All well.

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1. Question. State your name, age, residence, and occupation.

Ans. My name is John B. C. Moores; age, 29 years; reside at Glendale, Ohio; am a merchant by occupation.

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Ans. I am her husband.

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153 Ans. I am not certain, but the date of the certificate of stock will show.

9. Quest. Had you or your wife had any transactions in the stock of that bank prior to that date?

Ans. No, sir.

10. Quest. Had you visited Piqua prior to that date and subsequent to the date at which your brother became cashier, which was May, 1867?

Ans. I don't remember.

11. Quest. Had you any personal knowledge of the condition of the stock-books of that bank, who were stockholders and the amounts of stock held by them respectively, and the mode of transfer of shares adopted and observed by the bank?

Ans. No.

12. Quest. At the date of this certificate in what business was your father engaged, and where, and in what business were you
154 engaged, and where?

Ans. Father was engaged in the lime business, and a lot of things besides. I don't know what they were. He was settling up an estate of his son James C. Moores, in Cincinnati, and I was engaged in queensware at 87 Main street, of the firm of Hunnewell, Moores and Hukill, Cincinnati.

13. Quest. The Caldwell money was collected by law, and by a lawyer, was it not?

Ans. It was; by Warner M. Bateman.

14. Quest. To whom did Mr. Bateman pay the money?

Ans. He gave a check to the plaintiff, to her order.

15. Quest. Whose check was it; who was the drawer of the check, and what was the amount of it?

Ans. The drawer was Warner M. Bateman, and the amount was $9,100, on Larkin, Wright & Co., I think.

155 16. Quest. To whom did the plaintiff pay the money, and when?

Ans. I deposited in the Franklin Bank for a few days till I found some way to invest it.

17. Quest. What became of it then?

Ans. On receipt of certificate of stock and the contract that accompanied the stock I paid part to father and part to Robert—I don't remember who. I know, I think, what part of it was used for—in taking up some paper in Covington on which father and Robert were liable.

18. Quest. Was this Covington paper paper of James C. Moores, who had failed?

Ans. I don't know. All I know is that father and Robert were together in their transactions, and I gave it to them.

19. Quest. Was not this money, or a part of it, paid to your father in payment of your own indebtedness to him, or at least in consequence of the use by you of $6,600, which he complained ought not to have been charged to him at that time?

156 Ans. No, sir.

20. Quest. Have you the checks which will show the payment by you of the $9,100?

Ans. No; I have not; but I think I can get them from Mr. Olmstead, the teller.

21. Quest. Are you sure that you received the certificate of stock before the money or any part of it was paid?

Ans. I am not sure of that, but the contract was signed and given to me before I paid out any money. I either had the stock or the assurances that it would be forthcoming.

22. Quest. Have you the means of fixing the date at which you received the certificate?

Ans. July 15, 1867. I have the letter enclosing it in my hand. The letter is dated July 15, 1867, in Piqua.

23. Quest. Will you please annex a copy of that letter to your deposition?

157 Ans. I now offer a copy of that letter, marked Exhibit A, to be attached to this deposition. I now produce the contract above referred to, a copy of which I wish to be attached to this deposition, and marked Exhibit B. This is the contract referred to in question 6 of this deposition.

24. Quest. Did Mrs. Moore ever vote this stock at elections, draw or apply for dividends, or exercise any other power as a stockholder?

Answer. No; she left it all to me.

25. Quest. Did you do any of those things?

Ans. I did not; but as I owed father an amount of money, I paid him interest on $9,100, less than I owed him, as when the transfer was made Robert requested the privilege of voting on the stock and drawing the dividends.

26. Quest. The dividends or interest then was settled between yourself and your father was it?

Ans. Just as I answered in the other question—that's the way they were settled.

158 27. Quest. How much did you owe your father July 15, 1867?

Ans. About twenty thousand dollars.

28. Quest. Was any of this $9,100, credited to you in any account with your father?

Ans. Not one cent.

29. Quest. When was the bank advised that Mrs. Moores held the certificate sued on?

Ans. I don't know that it was ever advised, from the way Dr. Dorsey writes me; one would naturally suppose of course it was known, because the cashier wrote me in July, 1867, that it was duly transferred.

30. Quest. The letter of the cashier to which you refer is Exhibit A, is it not?

Ans. Yes, sir.

31. Quest. That which Dr. Dorsey has written you is that he had no notice prior to the receipt of a letter from your counsel shortly before the bringing of this suit, is it not?

159 Ans. No; it was an answer to a letter of mine written months before.

32. Quest. Please produce it and annex a copy to this deposition?

Answer. I now produce the letter, marked Exhibit C, and attach a copy of it to this deposition as Exhibit C. It is dated July 5, 1872. Also letter of June 25, 1872, marked Exhibit D.

33. Quest. Who was Dr. Parker referred to in said letters, and when had you mentioned it to him?

Ans. Dr. Parker was son-in-law of Dr. Dorsey. I don't remember the time when I mentioned it to him, but it was along in the spring of 1872.

34. Quest. Why did you speak to Dr. Parker about it, and what did you say to him?

Ans. We were speaking of Robert's actions in connection with the bank, and I told him that I had understood that this certificate of stock did not show on the books of the bank, and asked him if he knew

160 anything about it, if he knew certainly, and he said he was most certain it did not appear on the books of the bank.

35. Quest. Was he an officer of the bank?

Ans. Not that I know of.

36. Quest. From whom did you learn, and when, that probably no transfer had been made on the books?

Answer. Father told me a little while before he died that he thought the stock issued to the plaintiff, and a stock certificate of the Franklin Bank, and some others had never been transferred.

37. Quest. What was the date of his death?

Ans. February 29, 1870, I believe.

38. Quest. Was that the first knowledge or information that you had?

Ans. It was.

39. Quest. Had you not applied to your wife to loan you this
161 money, and had she not declined, before the date of this certificate?

Ans. I had not.

40. Quest. In what business was your father and R. B. Moores jointly interested at that time?

Ans. They were not partners in any business, but they were mixed up in a great many matters. I don't know what they were.

41. Quest. Are there any entries in your books or in any books in your possession or in your control that relate to the payment to your father or the disposition by him of this $9,100?

Ans. No.

42. Quest. You are administrator of his estate are you not, and have possession of his books for 1867?

Ans. I am administrator, and have all his books and papers, and have never seen any entry relating to this transaction.

43. Quest. Have you, since the examination began, visited the
162 Franklin Bank to obtain the checks asked for, and, if so, have you obtained them?

Ans. I visited the Franklin Bank and obtained only the certificate of deposit for $9,100, a copy of which may be attached, marked Exhibit E.

44. Quest. How was your indebtedness of twenty thousand dollars or thereabouts settled?

Ans. He transferred my indebtedness to Elizabeth Moores, my mother. It is not yet settled.

45. Quest. Did you not give your mother notes to the amount of about eleven thousand dollars in settlement of part of it?

Ans. I gave my father a note for something less than ten thousand dollars, which was made payable to Elizabeth Moores, which was a part of my indebtedness to him.

46. Quest. Was not the ninety-one hundred dollars which was advanced on this certificate made an offset against the remainder of your indebtedness?

163 Ans. This note of less than ten thousand dollars was the balance of my indebtedness after deducting ninety-one hundred dollars, and a note of ninety-one hundred dollars was also given by me to the order of W. B. Moores, my father.

47. Quest. Where is that note?

Ans. I have never seen it from the time I gave it to him, which was about the time of this transaction, about July 15, 1867.

48. Quest. Have you returned this note to the probate court as an asset of your father's estate?

Ans. No.

49. Quest. Why not? Were you not sworn to make a full return of the assets of your father's estate to the probate court within three months of your appointment?

Ans. Because father was one of the parties to the contract securing the bank stock, and, as I said before, he told me about the stock not being transferred, and he said that he would never use that note,
164 and I presume he destroyed it. Therefore I did not consider that I owed it. I was sworn to make a true return as administrator and I made what I supposed was a true return.

50. Quest. After your conversation with your father did you communicate to your wife the substance of that conversation, the conversation referred to in your last answer?

Ans. No; and I never made mention to my wife about any trouble with the stock until after January 1, 1873.

Cross-examination:

Quest. 1. Did you communicate to your wife any part of the arrangement with your father in regard to your own indebtedness to him, and, if so, how much?

Ans. I never told her about the amount of the notes given him, but she knew that I was indebted to him for the amount of my capital in business.

165 Quest. 2. Why did you not inform her of the apprehension communicated to you by your father in 1870 as to the stock?

Ans. At that time I was not positive what father said was correct, and then I put it off, hoping that it would turn out all right, as I had in reality twenty thousand dollars in my business, and was paying interest on ninety-one hundred dollars less, in accordance with my contract about the stock.

Quest. 3. Did you say anything to your brother Robert about it?

Ans. No; I have never spoken to him on the subject that I remember of.

Quest. 4. What, if anything, did you communicate to your wife in regard to the written contract about the stock of which Exhibit B is a copy?

She would not consent to investing the money in the bank without some other guaranty than the certificate of stock, and therefore took a guaranty from W. B. and R. B. Moores, who were then supposed to be solvent and ample security.

JOHN B. C. MOORES.

166 JNO. B. C. MOORES recalled.

Quest. (By pl'ff's counsel.) Whydid you not communicate the apprehensions derived from the conversations with your father in 1870 to the bank before 1872?

Ans. Because I was waiting for similar suits of this kind by the Franklin Bank and the Merchants' National, for certificates of stock held by them.

Quest. Was the first communication you made to them made to Dr. Parker?

Ans. I think it was; but that was not a communication made directly to them.

Quest. Had you made any enquiry of any officers of the bank prior to that time when you made the enquiry of Dr. Parker, and, if not, why not?

Ans. No; one reason was they were settling their difficulties with Robert; and another reason was that I thought it was time to see to this when my note to my mother fell due, which was in March, this year.

167 Quest. Did your wife at any time consent to this $9,100 or the stock being transferred to your benefit or used by you as her debtor?

Ans. No; and I never wished it such. Before the purchase of this stock I had all the capital required for five years I wanted in my business, and therefore did not need it, even should I want it.

(All this examination objected to as irrelevant and incompetent by the counsel for defendant.)

JOHN B. C. MOORES.

168 EXHIBIT A.

CITIZENS' NATIONAL BANK OF PIQUA,
Piqua, O., July 15, 1867.

JOHN: Herewith I hand you the stock transferred to Carrie. I don't know what day I will be down, and you can keep the contract there and I will sign it the first time I am down. I will have to take a receipt for the stock from father to file with my papers, to show where the stock is gone to. All well. May be down any day.

Y'rs,

R. B. MOORES.

169 EXHIBIT B.

For value received, namely, the sum of ninety-one hundred dollars, Robert B. Moores has assigned and transferred to Caroline A. Moores ninety-one shares of stock of the Citizens' National Bank of Piqua, Ohio.

Now it is agreed that the said Caroline A. Moores shall, upon demand by Robert B. Moores or his assigns, reassign to said R. B. Moores the said stock for the same amount. And it also agreed that, whenever the said Caroline A. Moores shall require it, the said Robert B. Moores shall purchase said stock at the amount aforesaid, and pay the same to her in cash; and in mean time it is agreed, and the Robert B. Moores and William B. Moores do hereby guaranty and assure to said Caroline A. Moores an annual dividend upon said stock of not less than ten per cent. upon the par value of said stock, namely, ninety-one hundred dollars, which guaranty shall be performed and fulfilled at the end of each year herefrom, or at the time of each dividend declared, if such dividend shall be declared oftener than once a year; and all deficienc'es in said dividends shall be made good at the time of said repurchase or transfer to R. B. Moores.

170 In witness whereof the said Caroline A. Moores and J. B. C. Moores, her husband, and Robert B. Moores and William B. Moores hereunto set their hands on this 15th day of July, 1867.

CAROLINE A. MOORES.
J. B. C. MOORES.
ROB'T B. MOORES.
W. B. MOORES.

[5-c't int. rev. stamp, cancelled by Hunnewell, Moores & Hukill, Cincinnati.]

EXHIBIT C.

G. V. DORSEY, *President.* C. S. PARKER, *Vice-P't.* H. C. LANDIS, *Cashier.*

CITIZENS' NATIONAL BANK,
Piqua, Ohio, July 5, 1872.

JOHN B. C. MOORES, Esq.:

MY DEAR SIR: There is no such certificate as mentioned in yours of June 27th on our books. No. 56 is marked on the stub in our certificate book "destroyed," in R. B. Moores' handwriting. Your wife's name was never entered among our stockholders, and the certificate is a fraud. We never heard of this certificate until you mentioned it to Doct. Parker, who first informed me of it.

Very truly yours,

G. VOLNEY DORSEY.

171 EXHIBIT D.

CITIZENS' NATIONAL BANK OF PIQUA,
Piqua, Ohio, June 25, 1872.

JOHN B. C. MOORES, Esq., *Cincinnati, Ohio:*

DEAR SIR: I am informed that you hold a certificate or certificates of stock purporting to be issued by this bank. Will you be good enough to inform me the No., date, and amount of the cert'f's held by you.

I never heard of this until you mentioned it to Doct. Parker.

Respectfully yours,

G. VOLNEY DORSEY, *Pres't.*

172 EXHIBIT E.

No. 333.]

FRANKLIN BANK OF CINCINNATI,
Cincinnati, July 13, 1867.

[5 c't int. rev., cancelled.]

J. B. C. Moores has deposited in this bank ninety-one hundred dollars, payable to the order of himself, on return of this certificate, in bankable funds.

B. F. BRANNAN, *P't.*

On the back of this certificate were the following figures in pencil:

1,200
1,500
5,000
1,400

9,100

Also indorsed, John B. C. Moores.

H. B. OLMSTEAD, being by me first duly examined, cautioned, and solemnly sworn, deposeth and saith as follows, viz:

1. Ques. State your age, name, etc.

1. Ans. H. B. Olmstead; teller in Franklin Bank; resident of Cincinnati; age, 42 years.

173 2. Ques. State how, when, and to whom was paid the certificate of deposit, Exhibit E ?

2. Ans. I have no personal recollection of it. Our books show that it was paid on the 16th day of July, 1867, the whole amount paid on that day. How it was paid I can't tell. Now, to whom. I suppose it was paid to John B. C. Moores, there was no other indorsement. Mr. J. Moores claims that I paid part of it in memorandum checks and part in currency, which I might have done. When we give a memorandum check*s* that remains out over one day *one day*, we make an entry of it in the cash-books, so as to balance the cash at night. I have examined the cash-books of that date, and find no entry of any teller's check; consequently, I suppose if I gave any memorandum checks they must have all been paid on that day. I generally make any entry in the cash-book. We balance *one* cash every night.

Cross-examination:

3. Ques. Might not memorandum checks such as you've alluded
174 to in your last answer have been given and remained out, say two or three days or possibly longer, without any entry of them having been made in your cash-books ?

3. Ans. It might be done by laying money aside to meet such memorandums, as is sometimes done, but not generally the case.

H. B. OLMSTEAD.

175 I, E. L. De Camp, a notary public within and for the county of Hamilton and State of Ohio, do hereby certify that John B. C. Moores and H. B. Olmstead were by me severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed as above set forth were reduced to writing by myself, in the presence of the witnesses respectively, and were respectively subscribed by the said witnesses in my presence, and were taken at the time and place in the annexed notice specified; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit; and commenced at the time in the notice specified and continued by adjournments from day to day, as above stated.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal, on the 30th day of October, 1873.

[SEAL.]

E. L. DE CAMP,
Notary Public, Hamilton Co., Ohio.

176 *Exhibit C.—Bill of ex.*

Deposition of Caroline A. Moores, taken before me, E. L. De Camp, a notary public within and for the county of Hamilton and State of Ohio, on the tenth day of January, A. D. 1874, to be read in evidence on behalf of the defendant in case number 1734 in the circuit court of the United States, wherein Caroline A. Moores is plaintiff and the Citizens' National Bank of Piqua is defendant; Wm. M. Ramsey being present on behalf of the defendant, and A. Taft being present on behalf of the plaintiff.

Question 1. Please state your name, age, residence, and occupation.

177 Answer. Caroline A. Moores; residence in Glendale, Hamilton County, Ohio; I am the plaintiff in this action, and have no occupation.

2. Question. Please state the history of the acquisition by you of the certificate sued upon.

Answer. I got the certificate from the National Bank of Piqua for $9,100.

3. Question. Where did you get it, and from whom?

Answer. I don't know how many years ago. It is five or six years ago. I don't remember the date. I got it from Robert Moores.

4. Question. Did he deliver it to you personally?

Answer. He did. I don't know whether he did or not. I don't remember.

5. Question. Was the certificate ever in your personal possession? If so, when did you receive it; who has had the custody of it from the time of its date?

Answer. It was. I received it about the time the original con-
178 tract was signed. My brother, Mr. F. H. Lawson, has had the custody of it from the time of its date.

6. Question. Who paid the $9,100 to R. B. Moores, and what did he do with the money?

Answer. My husband, Jno. B. C. Moores, paid it, and I do not know what he did with the money.

7. Question. What interest had Wm. B. Moores in the transactions?

Answer. He was interested with Robert, and he wanted the use of the money to pay debts, I suppose.

8. Question. Were you aware that your husband was indebted to Wm. B. Moores at that time?

Answer. I was.

9. Question. What was the amount of that indebtedness at that time?

Answer. I think it was $20,000.

179 10. Question. What was said about that indebtedness in connection with this transaction?

Answer. I don't know. I don't remember hearing anything about it at the time.

11. Question. What was said about it afterwards?

Answer. He had to pay interest, and it would make it easier for him to pay it in that way; it would benefit his father, and he wanted to help him in that way.

12. Question. When did you first learn that the bank disputed the validity of the certificate?

Answer. Just about a year ago this spring.

13. Question. Had you not had an intimation before that the stock was spurious?

Answer. No, sir.

14. Question. How was the indebtedness of your husband to Wm. B. Moores, settled?

Answer. I don't know.

180 15. Question. Do you not know that $9,100 of it was settled by this stock transaction?

Answer. I don't know.

16. Question. Did you never hear so?

Answer. No; I did not.

17. Question. You consented, did you not, that the interest on this $9,100 should be an offset to interest due from your husband to Wm. B. Moores?

Answer. I did.

18. Question. Who acted for you in making this arrangement with R. B. Moores?

Answer. John B. C. Moores, my husband.

19. Question. Had you any personal knowledge of the Citizens' National Bank, the amount of its capital stock, its mode of doing business, or the names of its stockholders?

Answer. I had not; I only knew that Mr. Robert Moores and Mr. Dorsey were stockholders; I knew Mr. Dorsey was president
181 and Mr. Robert Moores was cashier of the bank.

20. Question. How did you know that they were stockholders?

Answer. From my husband telling me so.

21. Question. Have you never been told that prior to the death of Wm. B. Moores he notified your husband that this certificate was invalid, and that he settled it with your husband, crediting, your husband with $9,100 on account of the certificate and taking his note for the balance of his indebtedness?

Answer. No; because I did not know anything about its being invalid till about a year ago, and he's been dead about three years.

22. Question. How did you suppose that R. B. Moores was able to vest in you a title to $9,100 of stock? Did you suppose that he was the owner of that amount of stock and was transferring it to you?

Answer. I certainly did.

23. Question. You relied upon his statement to that effect, did you?

182 Answer. I did.

Cross-examination:

X. 24. Question. Whose money was it that paid for the certificate?

Answer. It came from my father's estate; it was mine.

X. 25. Question. What do you mean by your answer to the sixth question-in-chief, that your husband paid for the $9,100?

Answer. He acted for me, as my agent, in paying for it with my funds.

X. 26. Question. Did you, in allowing your husband to have the interest or dividends on the stock applied to the payment of interest due from him to his father, intend to give him any interest in the stock itself?

Answer. I did not.

X. 27. Question.

CAROLINE A. MOORES.

183 I, E. L. De Camp, a notary public within and for the county of Hamilton and State of Ohio, do hereby certify that Caroline A. Moores was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by her subscribed as above set forth was reduced to writing by myself, in the presence of the said witness, in my presence, and said deposition was taken on the tenth day of January, A. D. 1874, at the office of Mess. Matthews, Ramsey and Matthews, in Cincinnati, Ohio; that I am not counsel, relative, or attorney of either party, or otherwise interested in the event of this suit, and that both parties were present by attorney at the taking of said deposition.

Witness my hand and notarial seal, this 10th day of January, 1874.

[SEAL.] E. L. DE CAMP,
Notary Public.

184 Supreme Court of the United States.

CAROLINE A. MOORES
vs.
CITIZENS' NATIONAL BANK OF PIQUA. } No. 1734.

Know all men by the' presents, that we, Caroline M. Moores, as principal, and John B. C. Moores and Franklin H. Lawson, as sureties, are held and firmly bound unto the Citizens' National Bank of Piqua, Ohio, in the sum of five hundred dollars, to be paid to the said The Citizens' National Bank of Piqua, Ohio, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, dated this 10th day of February, 1879.

Whereas the above-named Caroline A. Moores has sued out her writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio:

185 Now, therefore, the condition of this obligation is such that if the above-named Caroline A. Moores shall prosecute her said writ of error to effect and answer all costs if she shall fail to make good her plea, then this obligation to be void; otherwise to remain in full force and virtue.

CAROLINE M. MOORE. [SEAL.]
FRANKLIN H. LAWSON. [SEAL.]
JOHN B. C. MOORES. [SEAL.]

Sealed and delivered in presence of—

The above security is approved.

PHILIP B. SWING,
Judge of the United States, S. D. Ohio.

186 UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, Thomas Ambrose, clerk of the circuit court of the United States for the southern district of Ohio, hereby certify the foregoing to be a true and correct transcript of the record and proceedings in the case wherein Caroline A. Moores is plaintiff and the Citizens' National Bank of Piqua is defendant, as the same remains in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 10th day of May, A. D. 1879, and in the 103d year of the Independence of the United States of America.

Attest:
[SEAL.]

THOS. AMBROSE,
Clerk U. S. Circuit Court S. D. Ohio.

187 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of Ohio, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea, which is in the said circuit court, before you, between Caroline A. Moores and The Citizens' National Bank of Piqua, a manifest error hath happened to the great damage of the said Caroline

A. Moores, as by her complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 11th day of February, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.]

THOS. AMBROSE,
Clerk of the Circuit Court of the U. S., S. D. O.

(Indorsed:) United States circuit court. No. 1734. Caroline A. Moores vs. The Citizens' National Bank of Piqua. Writ of error. Filed 18 . , clerk.

A copy of the within writ of error lodged in this office February 11, 1879.

THOS. AMBROSE,
Clerk U. S. Circuit Court S. D. O.

188 THE UNITED STATES OF AMERICA:

Supreme Court of the United States.

To the Citizens' National Bank of Piqua, greeting:

Whereas Caroline A. Moores has obtained the allowance of our writ of error to the circuit court of the United States within and for the southern district of Ohio, directed to remove into the said Supreme Court, to be holden at the city of Washington on the second Monday in the month of October next, the records of a certain plaint, process, proceedings, and judgment in an action of money, wherein the said The Citizens' National Bank of Piqua in that action lately recovered against the said Caroline A. Moores judgment for costs, as by the said record in the said circuit court remaining appears, in which said record and proceedings, and also in the rendition of a judgment thereupon, manifest error hath intervened, as by the said The Citizens' National Bank of Piqua we are informed, and our said writ of error granted, issued, and allowed, as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be: You are therefore hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the second Monday in the month of October next, to have the errors aforesaid corrected.

Witness the honorable Morrison R. Waite, Chief Justice of the United States of America, this 11th day of February, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States of America the one hundred and third.

Attest:

[SEAL.]

JNO. BAXTER.
Circuit Judge 6th Circuit U. S.,
No Justice of the Supreme Court being present.

(Indorsed:) U. S. Supreme Court. No. . No. 1734. Cir. c't. Caroline A. Moores vs. The Citizens' National Bank of Piqua, Ohio. Citation to defendant in error.

We hereby acknowledge service of the within citation.
Cincinnati, June 24th, 1879.

MATTHEWS, RAMSEY & MATTHEWS,
Att'ys for Def't in Error.

189 Supreme Court of the United States.

CAROLINE A. MOORES, PLAINTIFF,
vs.
THE CITIZENS' NATIONAL BANK OF PIQUA, defendant. } No. . In error.

Of October term, in the year of our Lord one thousand eight hundred and seventy-nine, viz, on the second Monday of October in said term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Caroline A. Moores, by her attorneys, A. Taft and M. C. Shoemaker, and says that in the record and proceedings aforesaid there is manifest error in this, viz, that the demurrer by the defendant to the first reply by the plaintiff to the first defence of the defendant was sustained; and in this, that the motion for a new trial was overruled; and in this, viz, that by the record aforesaid it appears that the judgment aforesaid was given for the said The Citizens' National Bank of Piqua
190 against the said Caroline A. Moores, whereas by the law of the land the judgment ought to have been given for the said Caroline A. Moores against the said Citizens' National Bank of Piqua; and the said Caroline A. Moores prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that she may be restored to all things which she hath lost by occasion of said judgment, &c.

A. TAFT,
M. C. SHOEMAKER,
Attorneys for Plaintiff.

(Indorsed:) No. . Supreme Court of the United States. Caroline A. Moores, plaintiff, vs. The Citizens' National Bank of Piqua, defendant. In errors. Assignment of errors. A. Taft & M. C. Shoemaker, att'ys for pl'ff.

(Indorsement on cover:) No. 205. Caroline A. Moores, plaintiff in error, vs. The Citizens' National Bank of Piqua. S. Ohio C. C. U. S. Filed 2nd July, 1879.

NOV 26

SUPREME COURT

—OF THE—

UNITED STATES,

No. 205.

CAROLINE A. MOORES,
Plaintiff in Error,

vs.

THE CITIZENS NATIONAL BANK, of Piqua.

BRIEF FOR PLAINTIFF IN ERROR.

STALLO, KITTREDGE & SHOEMAKER,
of Counsel for Plaintiff in Error.

C. T. Woodrow & Co., Print., 146 Walnut St., Cin.

SUPREME COURT

—OF THE—

UNITED STATES,

No. 205.

CAROLINE A. MOORES,
Plaintiff in Error,

vs.

THE CITIZENS NATIONAL BANK, of Piqua.

BRIEF FOR PLAINTIFF IN ERROR.

ASSIGNMENT OF ERRORS.

I.

The Court erred in sustaining the demurrer of defendant to the reply of plaintiff to the first ground of defense in the answer of defendant. R. pp. 15 and 16.

II.

The Court erred in overruling the plaintiff's motion for a new trial and in rendering judgment for the defendant. R. p. 18.

STATEMENT OF PLEADINGS.

The case was tried upon the Second Amended Petition. R. 8. The defendant!s Answer; R. 12. The Reply; R. 15. The Demurrer to the first Reply to the first ground of de-

fense; R. 16. The amendment of the third defense in the answer; R. 17, and the Reply thereto.

The second amended petition charged, in substance and in legal effect, that the defendant was a National Bank, that on the 15th day of July, 1867, G. Volney Dorsey was its President and Robert B. Moore was its Cashier; and that they were charged with the duty of keeping the transfer books and issuing certificates of ownership of stock in said corporation. That on the 15th day of July, 1867, said Robert B. Moore represented himself to be the owner of ninety-one shares of said stock, of the par value of $9,100, and having sold the same to the plaintiff, that the said G. Volney Dorsey, as President, and Robert B. Moore, as Cashier, issued a certificate to the plaintiff, in the usual form, for said ninety-one shares, duly signed by the President and the Cashier; and the Petition avers that the plaintiff was ignorant of any facts affecting the validity of said certificate of stock until January 1st, 1873, and that she relied upon the representation and said certificate, and paid to said Robert B. Moore $9,100 therefor. And it further charges that thereafter, in January, 1873, the bank denied the validity of said certificate of stock, and refused to recognize the plaintiff as owner of stock in the corporation. The petition further charges that at the time of the issue of said certificate said Robert B. Moore was the owner of a large amount of the stock of the bank, which, however, without the knowledge of the plaintiff, was not in fact transferred on the transfer-book to the plaintiff, but was thereafter all transferred to the President of the Bank. That the certificate was in fact for an over issue of stock beyond what the law authorized, and was, therefore, void; which it charges was a fraud upon the plaintiff, and was fraudulently concealed from her by the officers of the bank. And avering that the said sum of $9,100 was, by reason of the premises, wholly lost to the plaintiff, it prays judgment for $9,100 and interest, and for such other relief as might seem meet to the Court.

THE ANSWER.

The answer, and amendment thereto, set up three defenses:

1st. That the plaintiff's alleged cause of action did not accrue within four years next preceeding the filing of her first amended petition or her original petition, said defendant claiming that the date of filing said first amended petition should be regarded as the date of the commencement of the action. The defendant further denies that the plaintiff was ignorant of the facts set forth in the petition, if they existed, at any time after they occured.

SECOND DEFENSE.

2d. For the second defense, it avers that on the 15th day of July, 1867, the plaintiff was a party to a contract with Robert B. Moore and others, set forth, whereby she agreed to re-assign the stock to said Robert B. Moore, upon the re-payment of the purchase price and 10 per cent. dividends, which were guaranteed to her by the other parties to the contract, and avers that said purchase price and dividends had been re-paid to plaintiff by Wm. B. Moores, whereby the said Robert B. Moore became entitled to the said paper purporting to be a certificate of stock.

THIRD DEFENSE.

3d. The third defense, as originally filed, admitted that the plaintiff paid the price of the stock, $9,100, in pursuance of the contract set forth, with Robert B. Moore and others, for a transfer of the stock to her, that the certificate set forth in the petition was delivered to her by Robert B. Moore, then defendant's cashier, and that the signatures thereto of its President and Cashier were genuine. But it alleged that the President signed certificates in blank for convenience in making transfers of stock, which the Cashier was in the habit of filling up and signing as Cashier when stock was transferred. It averred the certificate of the plaintiff's was such a certificate which Robert B. Moore, the Cashier, in violation of his

duty to the Bank, filled up and delivered to the plaintiff. And that said R. B. Moore had, prior to said date, been the holder of certificates of defendants' stock which, although they had not been transferred on the books of defendant, he had, in fact, transferred to other persons. And that at that time said R. B. Moore bore a good reputation for integrity.

DEMURRER TO THIRD DEFENSE.

Plaintiff demurred to this third defense, and her demurrer was sustained.

REPLY.

The plaintiff replied to the first defence, being a plea of the statute of limitations, and, as much turns upon this reply and the action of the Court upon it, we give it in full.

"First. Plaintiff, for reply to the first ground of defense in the answer of the defendant, says that at and prior to the fifteenth day of July, A. D., 1867, when the said certificate of the defendant for ninety-one shares of its stock was issued, as alleged in the petition, and from that time to the present the plaintiff was and has been a married woman, viz: the wife of John B. C. Moores, and under the disability of coverture.

2d. And for second reply to said first ground of defense plaintiff says that said cause of action did accrue within four years next preceeding the commencement of this action.

Second. And for a reply to the second ground of defense in said answer contained, the plaintiff denies that, in pursuance of said agreement, John B. C. Moores, the husband of the plaintiff, paid the sum of ninety-one hundred dollars unto Wm. B. Moore, his father, and the father of R. B. Moores, to be used for the benefit of said Wm. B. and R. B. Moores, and that it was so used, or that the said sum of money which is alleged by said defendant in said answer to be the property of the plaintiff, was ever paid by said Wm. B. Moores to plaintiff, or that the said R. B. Moores ever became entitled to take up said paper purporting to be a certificate of stock. Wherefore plaintiff asks judgment against defendant as before."

To the first reply, of the coverture of the plaintiff, the defendant demurred, and the Court sustained the demurrer, to which the plaintiff excepted. This is the principal error relied upon by the plaintiff. But it is necessary to its understanding to proceed with the statement of the record.

AMENDMENT OF THIRD DEFENSE.

The defendant then filed an amendment of its third defense. It alleged that, according to the rules and usages of defendant, no one was entitled to a certificate of stock without the surrender of a corresponding certificate for cancellation; that Robt. B. Moore had no corresponding certificate to surrender on July 15, 1861, and that all of this was well known to plaintiff.

REPLY TO THIRD DEFENSE AS AMENDED.

By further reply, the plaintiff denied all these allegations.

The case was submitted to the Court without a jury, and, after hearing the testimony, "the Court finds the issues to be in favor of the defendant" (R. 18), and judgment was rendered for defendant. A bill of exceptions, containing all the evidence offered by either party, was allowed, and made a part of the record.

ARGUMENT.

We are aware that this Court does not review findings of fact upon the evidence. But the bill of exceptions is important, in this case, in showing the materiality of the alleged error in sustaining the demurrer to the first reply to the first defense. Not one word of testimony was offered *tending* to show the repayment to plaintiff of the $9,100, as alleged, which was the gist of the second defense; and not one word of testimony was offered *tending* to show the knowledge of the plaintiff of the rules of defendant, and that Robert B. Moore, on July 15, 1867, owned no stock, as alleged, which was the gist of the third defense.

The substance of the plaintiff's case was a claim for damages sustained by the negligence and the fraud of defendant. The substance of the defense is:

1. To the allegation of negligence, and fraud, a plea of statute of limitations.

2. That the plaintiff had parted with her title.

3. That the plaintiff had actual knowledge of Robert B. Moore's fraud; and denying any fraud by the defendant.

The reply consisted:

1. In alleging coverture.

2. That the fraud charged was not barred.

3. Denying the payment, whereby the plaintiff parted with title.

4. Denying the knowledge of Robert B. Moore's fraud.

The only answer to the action for the alleged negligence, which was expressly admitted in the third defense as originally filed, and nowhere denied, was the statute of limitations.

The action of the Court below in finding the issues in favor of defendant, therefore, necessarily turned upon the first defense, set forth in the answer—the plea of the statute of limitations.

Was the coverture of the plaintiff a good reply to this defense? The statute of limitations, in force when the cause of action accrued, and when the action was brought, was included in the civil Code, and may be found in II. Swan & Critchfield, p. 947, Sec's. 12-19. The 19th Section is as follows:

"Sec. 19. If a person entitled to bring any action mentioned in this chapter, except for a penalty, or forfeiture, be, at the time the cause of action accrued, within the age of twenty-one years, *a married woman*, insane, or imprisoned, every such person shall be entitled to bring such action within the respective times limited by this chapter, after such disability shall be removed."

There can be no question as to the significance of this language, or the formal sufficiency of the reply under it. The

contention of the defendant is that, when the Legislature amended, by the act passed April 18, 1870 (67 O. L., 111.), the 28th section of the Code (2 S. & C., 953), which required a married woman to sue, in actions concerning her separate property, by her next friend, and provided that she might, in such actions, sue alone, and should not be required to prosecute by her next friend, that, by *implication*, the saving in favor of married women, in the 19th Section of the Code, was repealed. And not only so, but since the first amended petition was filed on February 11, 1874, less than four years after the 28th section was so amended, on April 18, 1870, the contention of the defendant is, that this repeal by implication, if there was such a repeal, set the statute to running against the plaintiff before the repeal, so as that the Court will go back to July 15, 1867, if the cause of action arose then, and find the bar of the statute was complete on July 15, 1871, a little over a year after the disability of coverture was removed, if it was removed, by the Act of April 18, 1870.

We affirm:

1. That the Act of April 18, 1870, does not remove the disability enacted by section 19, of the Code.

2. That, if the act did remove the disability, the statute of limitations did not commence to run until the disability was removed, by the Act of April 18th, 1870—less than four years before the amended petition was filed.

We begin with the consideration of the latter proposition, because, if it is entirely free from doubt, as we conceive it to be, it relieves the necessity of considering, or passing upon the former proposition, until it may be passed upon by the Supreme Court of the State. In the case of Kibbe vs. Ditto (93 U. S., 674), this Court, deeming itself bound by the decision of the Supreme Court of Illinois, as establishing a rule of property in that State, held that the Illinois Act of 1861, protecting married women in their separate property, repealed, by implication, a saving in a prior statute of

limitations in favor of married women. The case followed was that of Castner vs. Walrod; and the citation from it, on page 679, shows that the ruling was expressly that, upon the removal of the disability of coverture by the Act of 1861, the married woman was *then* bound within seven years (the period provided by the statute) to bring her action, or her right would be barred.

In the recent case of Magruder vs. Ermay (35 O. St., 222, see p. 239), it was held that the act there in question, so far as it operated to set the statute of limitations in motion anterior to its passage, in respect to tax sales occurring before its passage, was in conflict with the Constitution of the State. And the Court, in reaching this conclusion, lay down the following proposition, which is also directly applicable to the case at bar:

"It (the statute) cannot operate as a statute of limitations as respects sales occurring before its passage, because not sufficiently definite and uniform. It fixes no time after its passage within which the action may be brought. One who purchased the land five years ~~after~~ before the expiration of twenty-one years from the date of the tax sale, would have five years, under the operation of the statute, within which to commence his action, while one who purchased one day before would be required to bring his action within twenty-four hours. A statute of limitations, to be operative, must afford the party on whose rights of action it operates a reasonable time within which to commence his action, and such time must be definite and uniform."

But the question, now under discussion, has been directly settled by a decision of the Supreme Court of Ohio, so far as a decision of that Court can settle it. In the case of Lawrence Railroad Company vs. Cobb (35 O. S., 94), the action was commenced by a married woman, on the 2d day of April, 1874. The injury complained of was committed in 1866, and was covered by the section of the statute of limitations prescribing four years as the period within which the

action should be brought. The statute was pleaded, and the Court, in deciding the question raised by the plea, say, p. 97:

"By the provisions of the general statute of limitations, married women are saved from its operation (Sec. 19, Civil Code of 1853); and if it were conceded (a point we do not find it necessary now to decide) that the amendment of Sec. 28, of the Civil Code (67 O. L., 111.), giving a married woman the right to sue in her own name, in actions like the present, withdrew the protection of coverture, still the period of four years, limited by the general statute for the commencement of such an action, had not transpired from the date of the passage of that amended section, before the original action was commenced."

And it holds that the action was, therefore, not barred.

If this Court follows the construction of the Supreme Court of the State, as it announced upon a similar question in Kibbe vs. Ditto,* *supra*, it was bound to do, it disposes of the question now discussed, and establishes the error of the Court below in sustaining the demurrer to the first reply to the first defense in defendant's answer. The amended petition was filed in this case within four years of the passage of the Act of 1870.

We do not feel at liberty, in view of the above authorities, to extend the argument. We beg to add the additional consideration, upon the wider question whether the amendment of section 28, of the Code, repealed, by implication, the saving of section 19 in behalf of married women; that the legislative authority, evidenced by the re-enactment of both sections 19 and 28, as a part of the revision of 1880 (R. S., Sec's. 4,986 and 4,996), shows that the Legislature did not regard the provisions as inconsistent.

II.

Assuming that the Court erred in sustaining the defendant's demurrer as above argued, we have a clear error of the

*See, also, Railroad vs. Blossburg, 20 Wal., 137.

Court accruing, not in respect to the admission or exclusion of evidence, or in giving or refusing charges upon it, but in ascertaining the issues in respect to which evidence might be taken and considered by the Court. As to such an error, in respect to "the foundation" of the action, as this Court termed it, in Ins. Co. vs. Piaggio. 16 Wal. 286, we understand the rule of decision to be that it must clearly appear that the party complaining could not in any event be prejudiced by it. As was said by the Supreme Court of Ohio in reference to a similar error; Bartges vs. O'Neal, 13 O. St. 72. "In a case like the present, when error has clearly intervened in the record, a reversal of the judgment is due to the party against whom it was rendered, unless it appears clearly that he has not been prejudiced thereby. In this case it can only be affirmed that possibly the plaintiff in error was not injured by such misjoinder, and errors so appearing upon the record. It can not be affirmed that the plaintiff in error was evidently not injured thereby."

We have already adverted to the fact that an inspection of the bill of exceptions shows, that no evidence was offered tending to sustain the material allegations of either the second or third defenses, presented by the defendant's answer. The only controversy of fact in the Court below was over the issue raised by the defense of the statute of limitations. But our adversaries say there is a general finding, that "the issues are in favor of the defendant." We claim that this language does not necessarily import that any other issue than that of the statute of limitations was passed upon by the Court. But the conclusive answer as to all this branch of the argument, as it seems to us, is, that, upon the pleadings, after the defendant's demurrer was sustained, all evidence of the negligence or fraud of the defendant, charged in the petition as occuring more than four years before the commencement of the action, became irrelevant in the case, and was necessarily, either not admitted, or excluded from consideration by the Court below. As to such negligence or fraud, or in more general terms as

to the entire cause of action alleged or proved as occuring more than four years before the filing of the original or first amended petition, the issues presented became immaterial issues. As to any *such* cause of action the Court had already determined, as matter of law, that the plaintiff could not be further heard. The issues tried, or that, upon the record as it stood, were triable in the Court below, were simply whether a cause of action had accrued within four years, as to which the defendant had made good its defense. All the testimony that was competent to be received, or that being received, was competent to be considered by the Court, related to the negligence or fraud occurring within the four years before the filing of the amended petition. The bill of exceptions shows that this was so, but without an inspection of the bill of exceptions, we insist that such was necessarily the result of the condition of the pleadings.

Suppose, for instance, the plaintiff had proved a complete case of negligence of the defendant, occurring in July, 1867, when the plaintiff received her certificate of stock, a case, indeed, which the Court below held upon the third defense, as it originally stood, was expressly admitted by the defendant, and had rested, was not the Court bound, consistently with its ruling upon this demurrer to the reply, to sustain a demurrer to this evidence? And, if so, was it not, in like manner, bound to disregard it in the consideration of the case? How, then, can it be said that she was not prejudiced by this manifest error, which legally and logically precluded her from bringing the case she actually alleged in her petition to the consideration of the Court at all?

We, therefore, submit that the judgment of the Court below should be reversed.

STALLO, KITTREDGE & SHOEMAKER,
of Counsel for Plaintiff in Error.

Robert Clarke & Co., Printers, Cincinnati, O. [*January, 1882.*

SUPREME COURT OF THE UNITED STATES,

DECEMBER TERM, 1881.

CAROLINE A. MOORES,
Plaintiff in Error,

No. 205.] *vs.*

THE CITIZENS' NATIONAL BANK OF PIQUA,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR, IN REPLY.

TAFT & LLOYD,
Of Counsel for Plaintiff in Error.

Robert Clarke & Co., Printers, Cincinnati, O.] [*January, 1882.*

SUPREME COURT OF THE UNITED STATES,

DECEMBER TERM, 1881.

CAROLINE A. MOORES,
Plaintiff,

No. 205.] *vs.*

THE CITIZENS' NATIONAL BANK OF PIQUA,
Defendant.

BRIEF FOR PLAINTIFF IN ERROR, IN REPLY.

STATEMENT.

The plaintiff, by second amended petition (pp. 8 to 10 of Record), states that the defendant is a duly organized national bank, with a capital of $100,000, all subscribed and paid. That G. Volney Dorsey was president, and Robert B. Moores was cashier, who, on the 15th July, 1867, sold to the plaintiff ninety-one shares of the stock at par, and, as cashier, issued to her the stock by a certificate in due form, with the genuine signatures of G. Volney Dorsey, as president, and Robert B. Moores, as cashier, of said bank.

Plaintiff says that, relying upon the official representations of Robert B. Moores, the cashier, that the certificate was duly issued by the bank through its president and cashier, that the stock had been duly transferred by said cashier on the books of the bank, she received it and paid for it; that no such transfer had been made; that she did not learn that she had been deceived until January 1, 1873,

when she first learned that the defendant disputed the validity of said certificate, and denied the transfer on its books; that, after the issuing to plaintiff of said certificate, the defendant permitted the said Robert B. Moores, its cashier, to transfer all his stock standing in his name to said G. Volney Dorsey, president of said bank, for the benefit of said bank, and that the defendant now refuses to recognize plaintiff as owner of said stock, or to recognize the validity of said certificate; that these facts were concealed from the plaintiff fraudulently by the defendant, through its said cashier, and that her loss has been $9,100, and interest.

To this, the defendant answers:

First. That the cause of action did not accrue within four years; and denies that the plaintiff was ignorant of the facts set forth in her petition, or of facts which should have led her to inquire into them, until January 1, 1873, or any other date after July 15, 1867.

Second. Sets up a contract dated July 15, 1867, to which the plaintiff and her husband, J. B. C. Moores, Robert B. Moores, and his father, Wm. B. Moores, were parties, which was a contract of sale by Robert B. Moores of ninety-one shares of said bank stock at par to the plaintiff, with an agreement that Robert B. Moores would repurchase it at par, whenever plaintiff should ask it, and guaranteeing dividends at the rate of ten per cent. That defendant knew nothing of said contract, and that R. B. Moores paid the principal and interest of said $9,100 to the plaintiff.

Third. The third defense stated the facts of the case as claimed by the defendants, viz.: that the plaintiff, with her husband, John B. C. Moores, entered into the contract above mentioned, and, in pursuance thereof, delivered to plaintiff the certificate of defendant; that plaintiff was the owner of ninety-one shares of its stock; that plaintiff paid therefor

$9,100; that R. B. Moores was its cashier, and G. Volney Dorsey its president, and their signatures genuine, but that the paper was executed and delivered to plaintiff by said R. B. Moores without the knowledge of Dorsey, or any other officer of defendant, and that neither Dorsey or the bank had any interest in the transaction; that its capital stock was all taken up long before; that the transfer book contained printed certificates, with blanks for the name of holder, number of shares, number of certificate, date, and names of president and cashier; that Dorsey, president, signed some blanks, to be used in his absence by the cashier, by filling them up for persons who should present their certificates for transfer, taking up the old certificates in place of the new; that this was intended for the accommodation of stockholders and to prevent delay.

That it was upon one of these blanks that said R. B. Moores, in violation of his duty to the bank, wrote the pretended certificate, which he delivered to plaintiff.

That by the rules and usages of the bank, no one could procure a new certificate without surrendering the old one for cancellation.

That prior to July 15, 1867, said R. B. Moores had been the holder of stock, but that he had transferred his certificates to other persons, and that while they had not been transferred on the books of the bank, they were all held by other persons, who had paid value for them, and that none of them, or any interest in them, were ever after in R. B. Moores' possession.

"For a fourth defense, the defendant denied all allegation in the said amended petition, except those distinctly admitted herein."

To this answer the plaintiff replied to the first ground of defense:

1. That the plaintiff was, and continued to be, a mar-

ried woman. 2. That the cause of action did accrue within four years.

To the second ground of defense, which was payment, the reply was a denial.

To the third ground of defense, which stated the whole case, the plaintiff demurred.

The defendant demurred to the reply of coverture, and to the reply that it did accrue within four years. On these issues of law the case was argued, and the Court sustained the plaintiff's demurrer to the third ground of defense, which stated the whole case, and also the demurrer of defendant to the reply of *coverture* (to which the plaintiff excepted), and overruled the defendant's demurrer to the reply, that the cause of action did accrue within four years; leaving the question, whether the action did accrue within four years, and the question of payment, the only issues of fact, if we except the formal denial in the fourth defense, which after the admissions in the third defense, that were not covered by it, had not much force.

Afterward, the defendant obtained leave to file, in lieu of the third ground of defense, to which the demurrer had been sustained, an answer denying *that G. Volney Dorsey had any connection with the transactions, alleged in the petition, or that he issued the certificate, or that R. B. Moores, as its cashier, issued it;* or *that R. B. Moores held any stock certificates on July* 15, 1867, or at any time thereafter; alleging, that by the rules and custom of defendant, no one was entitled to receive a certificate without the surrender of a certificate of corresponding amount for cancellation, which was known to plaintiff, and denying all fraud and negligence. This defense was met with a denial.

THE FINDING BY THE COURT.

The entry of the trial of this case is as follows:

"This day came the parties, plaintiff and defendant, by their attorneys, and filed their written stipulation waiving a jury, and submitted this case to the Court *upon the issue joined.* On consideration whereof, the Court finds the issues to be in favor of the defendant, to which finding the plaintiff, by her attorneys, excepts."

By the bill of exceptions, which is also made a part of the record, the finding of the Court is thus described, viz:

"This was all the evidence offered by either party.

"Thereupon, the Court found for the defendant, to which the plaintiff excepted; and the plaintiff moved for a new trial on the ground that the finding was against the evidence and the law." "The Court overruled said motion for a new trial, and rendered judgment for the defendant, to all of which the plaintiff excepted."

These two expressions, by which the finding of the Court is described, import the same thing, viz: that the Court, on the issues, found a general verdict *for the defendant.* The expressions "the Court find the issues to be in favor of the defendant," and "the Court find for the defendant," mean that, on the issues, the Court finds for the defendant and against the plaintiff. It does not necessarily mean each and every issue, but that all the issues on the pleadings as they stand, necessary to make a case for the defendant, are found for the defendant. If the pleadings are right, the finding is right. If it was necessary to justify the Court in finding generally for the defendant on the evidence under those issues that all the issues should be found for the defendant, then the finding applied to each. But such was not the case here. If the Court found that the cause of action was complete when the plaintiff was de-

prived of her money by imposing upon her the worthless certificate, July 15, 1867, under the pleadings as they stood, it must find "for the defendant," or find the issues to be in favor of the defendant. This, we insist, is the proper construction of this general finding for the defendant.

The defendant insists that the finding is for the plaintiff on each and every issue. We shall consider it in both aspects; and hope to satisfy the Court that, whether our construction of the finding is right or that of the learned counsel for the defendant, the error in sustaining the demurrer to the first replication is equally fatal to the judgment.

I. *We claim that there was a manifest error in sustaining the defendant's demurrer to the replication of coverture.*

The Court went upon the idea that the act of April 18, 1870, which provides, "that when the action concerns the separate property of a married woman, she may sue and be sued alone," repealed the clause in the statute of limitations, saving married women from its operation.

That clause was as follows: "Sec. 19. If a person entitled to bring any action mentioned in this chapter be, at the time the cause of action accrued, within the age of twenty-one years, *a married woman*, etc., any such person shall be entitled to bring such action within the respective times limited by this chapter after such disability shall be removed."

The act relied on as repealing this is the 28th section of our code, which is as follows: "Where a married woman is a party, her husband must be joined with her, except that when the action concerns her separate property, or is between herself and her husband, she may sue or be sued alone, and in every such case, her separate property shall be liable for any judgment ren-

dered therein against her to the same extent as would the property of her husband, were the judgment rendered against him. But in no case shall she be required to prosecute or defend by her next friend."

1. We submit that there is nothing in this act which takes "a married woman" out of the saving clause in the statute of limitations. The relation of marriage is not abolished by that act. "To sue and be sued" is not all there is of marriage.

The act left married women in the saving clause of the code as it then stood. That code has been twice revised since, viz: by the "act to revise and consolidate the laws relating to civil procedure in Courts of Common Pleas," etc., passed May 11, 1878 (75 Ohio Laws, p. 604), and again in 1880, in a general revision of the statutes of the State, in both of which the words "a married woman" are retained in the saving clause of the provisions for the limitation of actions.

R. S. O., § 4986.

The saving clause is absolute, and applies expressly to "a married woman," irrespective of the question whether she "can sue and be sued" or not. By what right of construction the Court can take those words out, which the legislature have put in and kept in, passes our comprehension.

The counsel for defendant cites as authority of this Court in *Kibbe* v. *Ditto*, 93 U. S. 674, where this Court followed the decision of the Supreme Court of Illinois, in the construction of a statute of Illinois, as decided in the case of *Castner* v. *Walrod*, 83 Ill, R. 171.

But the statutes are widely different, and the construction of the statute of Illinois furnishes no authority for the construction of the statute of Ohio.

The statute of Illinois differed from that of Ohio, in

this, that the saving clause in the Illinois act saved the right of action of a *feme covert* for the time limited after she became a *feme sole*. (*Castner* v. *Walrod*, 83 Ill. 176–7.)

The Illinois "Act to protect married women in their separate property," provides, that all her property, real and personal, "should be her sole and separate property, under her sole control, and to be held and possessed and enjoyed by her the same as though she was *sole and unmarried*, and shall not be subject to the disposal, control, or interference of her husband, and shall be exempt from execution or attachment for the debts of her husband." Married woman's act of 1861.

But the married woman's amendments to our law are not so sweeping as the act of Illinois. She has, by Section 3,108 R. S. O., her sole and separate interest in her real and personal property, and a right to contract in relation to improving it, and leasing it for any time not exceeding three years. But this section is not to affect the husband's right of tenancy by the courtesy.

The learned counsel for the defendant cites also *Ong* v. *Sumner*, 1 Cin. Sup. Ct., p. 424, which was a divided opinion of an inferior Court, and he shows by reference to the case of *R. R. Co.* v. *Cobb*, 35 O. S. R. 94, that the Supreme Court of Ohio have not passed upon the question. He also cites *Bell* v. *Ballard*, 52 Barb., 141, a case which has not been recognized by the Court of Appeals of New York. That Court has held directly the other way, and regarded the disability of married women as existing under the act of 1860, which was the enabling act passed upon in *Bell* v. *Ballard*, and was equivalent to our 28th section of the code. The act of 1870, N. Y., took married women out of the saving clause, and so put an end to the question. This is precisely what the Legislature of Ohio have not done.

Dunkan v. *Sage*, 5 Lancing, 541.

S. C., 52 N. Y., 230.
Clark v. *McCann*, 18 Hun. 13.
Acker v. *Acker*, 81 N. Y., 143.
Clarke v. *Gibbons*, 83 N. Y., 107.
Wilson v. *Ib.* 36 Cal., 447.
Banman v. *Snelb* 26 Ind., 419.

2. But without pursuing the point further, we come to another.

The act on which the defendant's counsel relies was passed on the 18th of April, 1870, and this suit was commenced in 1873, and the amended petition was filed, and the defendant responded thereto in March, 1874, within less than four years of the passage of said act, which authorized a married woman "to sue and be sued."

The construction and effect of this act has been passed upon by the Supreme Court of Ohio in *R. R. Co.* v. *Cobb*, 35 Ohio St. R., 94, in which the Court, expressly waiving the question whether the disability was removed, held, that it could not take effect till it was passed, nor bar an action till four years after its passage.

This looks like demonstration, and leaves nothing more to be said on the question whether there was error apparent on the record.

II. But it is claimed that the plaintiff "*was not prejudiced*" by this ruling.

1. Having established a substantial error of law, apparent on the record, an error by which the issues were changed from what they should be, the strong presumption is that the party against whom the error was committed, was prejudiced. The burden of showing that the plaintiff was not prejudiced, is on the defendant. The presumption of prejudice is still stronger, and more diffi-

cult to rebut, in this Court, which can not examine the evidence that was presented to the Circuit Court.

In the present case we should be particularly pleased to have this Court examine the evidence and pass upon it. But, as this can not be done, the Court, in determining the question whether this fundamental error in the formation of the record was prejudicial, will consider whether there is any hypothesis on which the plaintiff might have been prejudiced, and, if there be any such hypothesis supposable, the judgment will be reversed. The plaintiff can not be required to exhibit the evidence to prove such a hypothesis, nor can the defendant disprove it by evidence.

Mr. Powell, in his work on appellate jurisdiction, p. 128, § 20, says:

"Where the error assigned is within the body of the record itself, showing a wrong decision upon a demurrer to evidence, or any departure from the law as developed by the pleadings and record, no such presumption can be made to sustain the judgment, for the very object of the record is to show that in all these matters the judgment of the court is right."

15 O. S. 392.
12 O. S. 437.
10 Pa. R. 61.

In *Bartges* v. *O'Neill*, 13 O. S. 72, a husband and his wife filed their petition, averring that the defendant had by fraud induced the husband to purchase and pay to defendant $1,300, for land worth but one hundred, the conveyance being made to the wife, claiming damages, $1,200. The defendant demurred to the petition, and his demurrer was overruled, when he took leave to answer, and did answer, denying all the material allegations of the petition,

averring fairness in the transaction, etc. It was tried and a verdict rendered for the plaintiff.

The court of error held:

1. That the petition filed by the husband and wife showing no joint cause of action, the defect could be reached on demurrer, and that overruling it was error.

2. That a judgment having been rendered against the defendant, for both plaintiffs, and it not appearing from the record that the defendant might not have been prejudiced by the overruling the demurrer, he was entitled to a reversal.

And the court say, on pp. 78–9: "But it is insisted by the counsel for defendants in error, that the plaintiff in error has not in fact been prejudiced by the fact that the judgment was rendered in favor of both instead of one of the plaintiffs, and that therefore the judgment should not be reversed. But, in a case like the present, where error has clearly intervened in the record, a reversal of the judgment is due to the party against whom it is rendered, unless it appears clearly that he has not been prejudiced thereby. Nor could this be affirmed, unless it appeared from the record that the plaintiff in error had no defense, set-off, or counter-claim, which he could have opposed in the action, if brought by one of the plaintiffs below, which he might not have equally availed himself of, in the action brought by both."

But the decisions in this court, are equally strong in the same direction.

"It must appear so clear as to be beyond doubt that the error did not and could not have prejudiced the right of the party."

Smiths v. *Shoemaker*, 17 Wall. 639.

Ins. Co. v. *Piaggio*, 16 Wall. 286.

Deery v *Gray*, 5 Wall. 795.

2. If, as we have claimed, the finding by the Court was a general finding for the defendant on the pleadings and the evidence, and imports only that, on the issues as they appeared upon the record, the Court found generally for the defendant, that is, found for the defendant on such issue or issues as were necessary to determine the case for the defendant, then, as each of the three defenses went to the whole action, if the Court found either of them sustained by the proof, the finding would be substantially such as this record shows. It would make no difference which of the issues was proved by the defendant; he might have the same general finding in his favor.

It might have been on the issue involving the defense of the statute of limitation, as well as on either of the others. If it was on that, there can be no question that the plaintiff was prejudiced by having his action defeated through that erroneous defense. And, as it is impossible to decide from the record on which issue the finding was founded, it is impossible for this Court to say that the erroneous defense was not prejudicial to the plaintiff.

A finding for the plaintiff imports that the issue on every defense which goes to the action is found for the plaintiff. Nothing less could warrant a finding in his favor; for no general finding and no judgment can be sustained for the plaintiff, so long as any one good defense to his action is undisposed of. But it is not essential to a determination in favor of the defendant, that the issue on every defense should be decided. It is essential that the jury, or the Court, should find for the party in whose favor a general finding is rendered, all the issues the finding of which is necessary to determine the case.

If the Court had found for the defendant on any one of his defenses, and rendered judgment thereon, it would not have been reversed in this Court, because the other is-

sues were left undecided. They would have become, as was said by Judge Davis in *Clearwater* v. *Meredith*, 1 Wall. 42, "immaterial." As soon as there is a finding for the defendant on one good defense, going to the whole action, all the other defenses become immaterial. It is on this very ground that the counsel for the defendant (his brief, p. 15) claims that the defense of the statute of limitations was "immaterial," citing *Clearwater* v. *Meredith*, as authority. But, by the same token, if the finding turned upon the plea of the statute, all the other defenses became immaterial, and the judgment was based upon error.

We will not delay upon this point further than to cite several cases, to show that such has been the opinion of courts and judges.

Browne v. *Browne*, 22 Md. R. 103.
Riggs v. *Barry*, 2 Curtis C. C. 259.
Eisemann v. *Swan*, 6 Bos. 668.
Clearwater v. *Meredith*, 1 Wall. 26.

There are many cases where a general finding for the plaintiff is held to import a finding on every issue for the plaintiff, as in

Laber v. *Cooper*, 7 Wall. 565.
Noonan v. *Bradley*, 9 Wall. 394.
Brooklyn v. *Ins. Co.*, 99 U. S. R. 370, 371.
Sapp v. *Langhead*, 6 Ohio St. 174.

But there is a case decided by the Supreme Court of Ohio, *Sites* v. *Haverstick*, 23 Ohio St. 626, that holds that a verdict finding "*the issues joined in this cause*" for *the defendant*, imports that both issues were found in favor of the defendant. The case was evidently not much considered, nor was the language of the finding identical with the finding in the present case.

3. If we now suppose, as the counsel for the defendant supposes, that the meaning of this finding by the Court

was that *every issue* was found for the defendant, nevertheless, this Court can not say that the Court below, in making its findings on the other issues, was not influenced by its erroneous ruling on the demurrer to the replication of coverture. The four years' limitation became the controlling rule of evidence, and, if the trial had been to a jury, whatever evidence was admitted, the Court would have to instruct the jury that, unless they were satisfied that the cause of action accrued within four years, their verdict must be for the defendant. The Court must have followed the same rule.

If the demurrer to the replication of coverture had not been sustained, the statute of limitations would not have been in the case, as that defense would have been fully answered and destroyed by the replication; and the issues of fact would have been:

1. Whether Robert B. Moores, in his official capacity as cashier of the defendant, did issue said certificate of stock to the plaintiff, which she received in good faith as evidence from the bank of her title to the stock, and paid for it the price of $9,100, and found it worthless? And,

2. Whether or not that money, of which she was so deprived, had been refunded to the plaintiff?

And there would have been no limit of time put upon the evidence, by which these issues should be proven on the part of the plaintiff. The fact that this false certificate was issued by the bank's cashier *on July* 15, 1867, six years before this suit was brought, would have required no explanatory allegations or evidence.

But the issues actually submitted to the judge who tried this case were, in substance, first of all, and controlling all,

1. Whether this certificate, bearing *date July* 15, 1867,

had been imposed upon the plaintiff by the defendant's cashier *within four years*, by which means she lost $9,100?

2. If so, had it been refunded to her? And,

3. Did Robert B. Moores, in his official capacity, issue said certificate to plaintiff, and deprive her of her money fraudulently, within four years?

The only cause of action which the Court could consider, was a cause of action accruing within four years—whether it was disputed, or paid.

In *Cooke* v. *Cooke*, Ex'r., 29 Md. 538, there were four issues, and the verdict was for the defendant upon all the issues. The Court, on page 553: "In this case there is error of law sufficiently appearing in the exception now under consideration, taken by itself, for which this Court must reverse, unless it appears that the appellant was not injured thereby. To determine this, the Court must look at and consider all the evidence in the record, and is not confined to that which is set out in the particular exception which the Court has been considering."

In that case, the judgment was reversed because the Court did not find in the evidence proof that the error had not been injurious to the plaintiff, the same presumption of injury to the plaintiff by the erroneous rulings on the demurrer to plaintiff's reply of coverture exists here, as existed in *Cooke* v. *Cooke*. But such presumption becomes absolute in this Court, which does not look into the evidence. If it were possible then, that the right of the plaintiff to offer evidence was injuriously affected by the erroneous ruling, the judgment must be reversed.

It is very clear that if the demurrer to the replication of coverture had been overruled, evidence could have been offered under that issue which would not be competent on the other issues in the case, under the ruling which subjected the plaintiff's cause of action to the statute of four

years' limitation. This is indubitable evidence that prejudice might result to the plaintiff from the error. It is proper on this question to look to Ohio for authority, as it falls within "the practice, pleadings, and forms and modes of proceedings in Civil Courts," mentioned in Section 914 R. S. U. S.

Fortunately, we have a case, decided by the Supreme Court of Ohio since the adoption of the code, which may aid us on this point.

In *Knox Co. Bank* v. *David Lloyd, adm'r*, 18 O. S., 353, it was decided that "Where a reply which sets up new matter sufficient in law to avoid the defense is on demurrer erroneously held insufficient, and the case is finally disposed of by a finding against the plaintiff on issues of fact under which the special matter in the reply is not available to the plaintiff, the error of the Court in sustaining the demurrers constitutes a good ground for reversing the final judgment and awarding a new trial, unless the record shows such error to have been otherwise waived."

This Knox County Bank case is very much in point. A suit was brought against the bank to recover a sum of money which the plaintiff had paid to get his property released from the levy of an execution on a judgment against him, that had afterward been vacated and the suit dismissed. The plaintiff had been an accommodation drawer of a bill of exchange made for the purpose of being discounted at their bank. The bank had refused to discount the bill; whereupon, the principal, for whose accommodation it was made, sold it to another party without the knowledge or consent of the plaintiff, the surety. Not knowing these facts at the time, the plaintiff, against whom, with the other parties to the bill, the bank, which had in the meantime purchased it from the third party, brought suit and recovered a judgment and levied on plaintiff's property, had

paid the money to release it. Finding out the facts afterward, the judgment was set aside, and case dismissed.

The answer set up the bill of exchange and the ownership by the bank, that the bill had been misdescribed in the suit against plaintiff and others, on account of which the suit had failed; but that the bank held the bill on which plaintiff was liable, and that, therefore, plaintiff should not recover his money back.

The plaintiff denied in his first reply that the bank was the legal owner of the bill, or that it discounted it for the plaintiff, or with his knowledge; denied notice, denied the other averments of the answer.

By a second reply, the plaintiff alleged that he was a surety on the bill made to be discounted with the bank which had been sued on, and that the discount or sale of it to the third party was without his knowlege or consent, and the facts were unknown to plaintiff when he paid said money.

To this a demurrer was sustained.

A third replication was demurred to and demurrer sustained. Afterward, the plaintiff obtained leave to file the fourth and fifth replies. The fourth, set out the transaction as above stated, viz: that the plaintiff was a surety on the bill made to be discounted at the bank, that the bank had refused to discount it, and it had been sold to another, and afterward sold by that other to the bank, all of which was without the knowledge or consent of plaintiff.

To this a demurrer was sustained by the Court of Common Pleas, and the plaintiff excepted. The fifth reply denied that there was money due the bank on the bill when the bank sued on it.

The case was submitted to the Court "upon the issues joined." And the Court found "*that the things set up in the defendant's answer were true, and that the matters and things*

set up in the petition, amended petitions, and reply of the plaintiff, inconsistent therewith, are untrue." Judgment accordingly.

The District Court reversed the judgment for error in sustaining the demurrer to the fourth replication.

To reverse this judgment of reversal, the case was taken to the Supreme Court.

It was claimed, by the counsel for plaintiff in error, as in this case, that the plaintiff below had waived the error in sustaining the demurrer to the fourth reply, by filing a fifth replication, and by going to trial on other issues; that the rulings on the demurrer were correct; and that the matter of the fourth reply could be proved under the issues tried. But the Court, on final hearing in error, decided that there was no waiver of the error in sustaining the demurrer to the fourth reply, which the Court held to be good. The Court held that the special matter of the fourth reply was not available under the issues which were tried, and affirmed the judgment of the District Court, reversing the judgment of the Court of Common Pleas.

This case shows (1.) that several replications may, under the code of Ohio, be filed to one defence; (2.) that pleading over, after a demurrer sustained to a replication where an exception was taken, does not waive the error in the ruling on the demurrer; (3.) and that where, by an error in such ruling, the plaintiff may have been prevented from making available, on the other issues, the evidence which would otherwise have been competent, the judgment must be reversed.

This Court has recognized and applied the same principle in the case of *R. R. Co.* v. *Bank of Ashland*, 12 Wall. 226. The action was on bonds and coupons, made by the Junction Railroad Company, of Indiana and Ohio, and guaranteed by individuals, and bearing interest at ten per cent.

The railroad company set up several defenses, averring that the bonds had been taken by the bank by way of loan at ten per cent. interest, which was beyond its power, and that the plaintiff took these said bonds with notice. There was one plea of *nil debet* to the common count, and three special pleas, to which demurrers were sustained, and then the defendant filed a fourth special plea, setting out all that was contained in the other pleas, and adding other circumstances of fraud and corruption, to which the plaintiff replied. It was submitted to the Court, which made a special finding for the plaintiff, on which judgment was rendered.

This Court held that if there was error in sustaining the demurrer to the three special pleas, it was not a ground for reversal, because the fourth plea contained all the averments of the preceding pleas, and all the evidence which would have been competent to support them, was available in support of the fourth; and the defendant could not be prejudiced by the error.

III. The learned counsel for the defendant says, that the plaintiff, under oath, replied that "the cause of action accrued within four years" (defendant's brief, 7), and he claims that the plaintiff is estopped to complain of the Court for limiting her to that allegation. But the plaintiff is no more estopped by her replication than the defendant is estopped by its answer and denials, to claim the contrary. There can be no estoppel in the case. The plaintiff alleged her cause of action, showing a false certificate of stock, issued to her by the bank's accredited agent, July 15, 1867, by which her money was taken from her. The bank pleaded that this action accrued more than four years before the suit was brought. She replies: 1—That admitting that fact, she was a married woman and could not be

barred by time. 2—That she *believed* that the cause of action accrued within four years. If the demurrer to the reply of coverture had been overruled, as it should have been, her second reply would have become immaterial. She would have been at liberty to prove the receipt of the certificate of stock from the cashier six years before, without going into the more difficult questions whether she knew of the fraud, or of circumstances which should have led to inquiry, more than four years before the suit, or whether the fact had been fraudulently concealed from her.

Here, it is proper to consider how far the code of procedure in Ohio, and the decisions of the Ohio Supreme Court thereon, are to be regarded in this case by this Court, under § 914 of the R. S. U. S.

Now, the question whether several replications are allowed to a single defense, and how far they are required to be consistent, or otherwise, and what is the effect of the verification by affidavit, may be considered as falling within the scope of "the practice, pleadings, and forms and modes of proceeding in civil causes." This Court will, therefore, on these questions, consult, if it does not strictly follow, the statutes and decisions of Ohio.

Section 5079 of the Revised Statutes of Ohio provides that, "When the answer contains new matter, the plaintiff may *reply* to such new matter, denying generally or specifically *each allegation* controverted by him; and he may also allege, in ordinary and concise language, *any new matter* not inconsistent with the petition, constituting an answer to such new matter in the answer."

This section of the code has been uniformly held to authorize several replications to a single defense. It is a thing of constant practice, and is well illustrated in *The Knox County Bank* v. *Lloyd*, 18 O. S. 353, where there were

five replications to one defense, on which were made three issues of law, and two of fact.

There is nothing so inconsistent between these two replications that they could not be made together under the code of procedure of Ohio; nor is there any thing in the oath to preclude her filing them.

Bank v. *Closson*, 29 O. S. 78, was like it in this respect. The suit was upon a note. The defendant put in three defenses:

1. He did not make the note.
2. His signature was obtained by a trick.
3. There was no consideration; of all which the plaintiff had knowledge.

Welch, C. J., gave the opinion of the Court. He said that the two defenses, taken together, amounted to this: "That the defendant is ignorant whether he signed the note or not; he does not believe he signed it, and, therefore, denies it; and that, if he did sign it, his signature was obtained by fraud, and without consideration. It is not inconsistent with the spirit and intention of the code that a party having one or the other of two good defenses, without the means of knowing otherwise than from the developments to be made upon the trial, which of the two, in fact or in law, is his true defense, shall at his peril be compelled to elect in advance on which he will rely, to the exclusion of the other. When, from the nature of the case, it is rendered uncertain which of two grounds of defense is the true and proper one, it is competent for the defendant, in his answer, to set them both up, provided they will admit of being stated in such form that the answer can be sworn to without falsehood, and in good faith." P. 81.

And this is precisely the principle, by which the pleadings in the present case are to be construed.

The defendant's brief (pp. 7, 8) attempts to show that

its own averments, that the plaintiff knew of the transactions out of which the cause of action arose more than four years before this action was brought, and that it occurred *without* and not *within* the four years, were all untrue, and that "the cause of action was not barred, and the plea of coverture was wholly immaterial."

Now, the plea of the statute of limitations implies the existence of a cause of action which accrued without the time limited. The finding of the Circuit Court is not consistent with that theory, nor was the finding on the different issues, if they are all found for defendant, consistent with each other. The finding that there was no cause of action, would not be consistent with the finding, that it had been discharged by payment, nor with the finding, that it accrued beyond four years.

IV. The counsel for the defendant claims, that it is only in cases where "the error occurred upon the trial," that the presumption of prejudice must be rebutted by a showing on the record that prejudice could not have happened to the party against whom the error was committed. The distinction is the other way, as stated by Mr. Powell in his treatise on the subject of appellate jurisdiction, p. 128, § 20. Nor is *Bell* v. *R. R. Co.*, 4 Wall. 598, an authority for the proposition of defendant's counsel. There had been pleas in abatement and demurrers to them, and afterward a plea to the merits, and a trial on the merits. The "irregularities" referred to were of a preliminary character, which were superseded by the party pleading to the merits, and going to a trial. That has no application to the present case.

The claim that the act of March 3d, 1865, now § 700, 9 R. S. U. S., limits the power of this Court to the examination of the record on the trial alone, is equally unfounded,

either in the legal construction of the act, or in any judicial authority. That section provides, for bringing upon the record the rulings of the Court in the trials of causes submitted to the Court without a jury, so that they may be reviewed on error. "The effect" of the finding of the Court had already, by section 649, been defined as "the same with a verdict of a jury;" but no adequate method had been provided to bring upon the record the rulings of the Court on the trial. This was accomplished by section 700.

Section 691, however, gives the general power to this court "to re-examine, reverse, or affirm," "all final judgments of Circuit Courts," and this can only be done by searching the entire record.

The proposition of the counsel for the defendant imports a most remarkable limitation on the jurisdiction of the Supreme Court in its exercise of appellate power. This court has often defined its jurisdiction on this subject, and illustrated its theory by practice.

In *Storm* v. *United States*, 94 U. S. R. 76, it was held, "That error apparent on the record *by demurrer* is open to re-examination and correction."

The Court, on p. 77 says, "Whatever error of the Court is apparent in the record, whether it be in the foundation, proceedings, judgment, or execution of the suit, it may be re-examined and corrected; but neither the rulings of the Court in admitting or excluding evidence, nor the instructions given by the Court to the jury are a part of the record, unless made so by a proper bill of exceptions." Citing *Suydam* v. *Williamson*, 20 H. 433.

V. The defendant claims that the replication of coverture was waived, by proceeding to trial on the second replication.

On the question whether a party, whose defense or rep-

lication has been erroneously adjudged insufficient on demurrer, waives the error by pleading over, there may be some difference between the rule which has been sometimes adopted in this Court and that existing under the code of procedure in Ohio. It has been often held in Ohio, under the code, and, indeed, under the statute, as it existed before the code was enacted, that an error committed by a ruling upon a demurrer, to which exception was taken, is not lost by pleading over, and going on to trial and judgment. As we have already shown, the code gives the right to file several replications to a single defense, as was done in this case, without objection.

By the code of civil procedure, § 513, "a judgment rendered by the Court of Common Pleas may be reversed, vacated, or modified by the District Court for errors appearing on the record." It does not say for errors appearing in the record of the trial, or in the final judgment. Under this section, and under the statute prior to the code, pleading over has not been held to waive the error in overruling or sustaining a demurrer, unless the former pleading has been withdrawn or abandoned.

In *Williams* v. *West*, 2 O. S. R. 82, a demurrer was erroneously sustained to a replication, and the plaintiff pleaded over, and was beaten on the trial of the issues. The judgment was reversed for the erroneous ruling on the demurrer.

In *Davis* v. *Hines*, 6 O. S. R. 473, the Common Pleas Court erred in overruling a demurrer to the petition, but the defendant took no exception and answered over, and went to trial on the issues of fact. The overruling of the demurrer was not assigned for error in the District Court. It was decided that, under those circumstances, the error was not available in the Supreme Court. But it was assumed, that if exception had been taken, or if it had been assigned

for error in the District Court, the Supreme Court would have entertained it, and made it a ground of reversal. The Court found also that the defect in the declaration had been supplied by the verdict.

In *Torbet* v. *Coffin*, 6 O. R. 33, 34, which was before the code, where the ground of objection appeared in the record, and the party resisted as far as he was permitted, his submitting to try the cause on its merits on other issues did not preclude him from taking the objection on error. But *Knox Co. Bank* v. *Lloyd*, 18 Ohio St. 353, is directly in point, which has already been cited on another point. But there need be no conflict of authority on this point. There has been no waiver here, according to any precedent in this Court. There has been no pleading over, after the sustaining of the demurrer. Exception was entered. What more, or what less, could the plaintiff do? The other issues came on and were heard, but there was no waiver of the error on the issue of law which remained on the record, and was preserved by the exception taken at the time it occurred.

VI. It is claimed, that the error in this case is not a ground for reversal, because "the defendant was entitled to judgment upon the pleadings." (Brief, 19.) He relies upon a contract which is set out in the second defense, by which it was agreed that the plaintiff should, on demand by R. B. Moores, re-assign the certificate of stock to him at par, and that, upon her request, R. B. Moores should repurchase it at the same price, and that the said R. B. and Wm. B. Moores guaranteed dividends at the rate of ten per cent. per annum. This contract was in writing, and signed by the plaintiff and her husband, and by Robert B. Moores and Wm. B. Moores. The learned counsel

says, "that the bank had no connection with that transaction; that it was without the agency of R. B. Moores, as cashier, and that neither party could have understood that he was acting as cashier." But he altogether misconceives our claim. We have not called upon the bank to perform that contract between the plaintiff and R. B. and Wm. B. Moores, which the defendant, and not the plaintiff, has brought upon the record. Our claim against the bank is, that its cashier, to whom it has given power to issue certificates of stock, has, by fraudulently using that power, deceived us, and defrauded us of the money paid for the supposed stock. What contracts existed between the plaintiff and the Messrs. Moores are immaterial. This certificate of stock, issued by the cashier in the name of the bank, with the genuine signatures of both its president and cashier, and in the usual due form of certificates of stock issued by said bank, has been the cause of her loss. Without that certificate, she would not have parted with her money. She purchased it as a genuine and valid evidence of ownership of the stock, in good faith.

2. The counsel for the defendant claims that the issue on the statute of limitations is immaterial, and cites the case of *Clearwater* v. *Meredith*, 1 Wall. 42, as an authority. That case was a suit for damages on a contract of the defendant, that the stock of a railroad company should be worth par at Cincinnati at a certain time. The defendant filed six pleas. The fifth plea showed that the guaranteed stock had been extinguished by the *consolidation* of said railroad company with two other companies, with the *consent* of the plaintiff. To this plea, the plaintiff tendered this issue, by replication, viz., that said railroad company was not destroyed, in whole or in part, "in the manner and form" as alleged by defendant.

To this replication to the fifth plea, defendant demurred generally, and the demurrer was sustained. Plaintiff declined to amend, and judgment was rendered against him. He risked his case on that issue, and this Court held that the demurrer was rightly sustained, and the judgment correct; that, consequently, all other issues were immaterial. That is clear, and clearly right. One good defense, established by the admission of the parties, and the judgment of the Court, is sufficient.

But how unlike that, is this case? Here the plea, or defense of the statute of limitation is met by two replications. First—Coverture. Second—Denial. Either of which if sustained would destroy the defense. The defendant demurred to the reply of coverture, and the demurrer was sustained. If this Court should be of the opinion that the Court was right in sustaining it, as it was right in sustaining the demurrer in *Clearwater* v. *Meredith*, we concede that the judgment must be affirmed.

But the Court was as clearly wrong in sustaining the demurrer to this replication, as it was right in sustaining that. Now, here we have error in the Court below; there they had none. The defendant, instead of relying upon that defense, to which the replication was filed to sustain his judgment, making the other pleas immaterial, as was done in that case, relies upon the other defenses, and asks the Court to hold this immaterial, and to sustain the judgment, notwithstanding the error.

Undoubtedly, any one defense which goes to the action and is proven and found by judge, or jury, is decisive, and will sustain a judgment. But if we consider these issues and this error, it becomes obvious that the erroneous rulings of the Court might extend its injurious influence to the trial of every other issue. It excludes all evidence of any cause of action accruing more than four

years before the action brought. This extends to each of the issues as described by the counsel for the defendant in his brief, viz: 1. Statute of limitations; 2. Payment, and 3. General denial.

The Court had established the rule by its erroneous judgment, that the statute of limitations did apply to this case on all its issues. Suppose the plaintiff had offered evidence which would prove that he had a just claim, such as described in the petition, but that it accrued more than four years before the action, it would not have been received on the issue of the statute of limitations, of course, as it would not be pertinent to that issue. Nor, after the ruling on the demurrer to the replication of coverture, could it be competent on the issue of payment, nor on the issue upon the general denial. The Court must be supposed to be guided in its findings by its rule already laid down authoritatively. If the evidence were admissible, it would not be available, because the statute would control the finding and judgment.

It is no answer to our case, that this cashier was violating his duty, or that he was individually cheating the plaintiff. Of course, he was doing that. But what the bank is responsible for is, not that R. B. Moores shall repurchase the stock when required at the same price, or that R. B. and William B. Moores shall make good to the plaintiff, their guarantee that the stock shall pay ten per cent. annual dividends; but that this certificate of stock issued by its authorized agent in its name, shall be good for what it purports to be, or if not, that the plaintiff shall be indemnified for her loss thereby. It had made R. B. Moores its cashier, and intrusted him with the power to sign and issue stock certificates, and he has used that power in the name of the bank to the damage of the plaintiff, $9,100. The question is, who shall bear the loss. There is no doubt

who has caused it; but the question is whether on the true principles of law, the plaintiff, or the bank, shall bear the loss.

3. The learned counsel can not altogether omit to mention the great and leading case on the responsibility of corporations for acts of their agents done within the scope of their agency, viz., *R. R. Co.* v. *Schuyler*, 34 N. Y., page 30. But he suggests the distinction that that case turned on the doctrine of *estoppel in pais*, which "meant fraud, or its equivalent, gross negligence." Precisely the same estoppel exists in this case. It is not quite correct, however, to say that estoppel "meant fraud," or even "gross negligence" on the part of the corporation. That case was settled on the principle of *estoppel*, not that the corporation was a party to the fraud, or that it was necessarily guilty of gross negligence; but because, as was said by this Court, in the important case of *Merchants' Bank* v. *State Bank*, 10 Wall., 645: "Corporations are liable for the acts of their servants while engaged in the business of their employment, in the same manner and to the same extent, that individuals are liable under like circumstances."

This case turned upon the wrongful acts of the cashier in certifying checks.

This Court said: "Upon the faith of his acts and declarations it parted with its property. The misfortune occurred through him, and, as the case appears in the record, upon the plainest principles of justice the loss should fall on the defendant."

"If the contract can be valid under any circumstances, an innocent party in such a case has a right to presume their existence, and the corporation is estopped to deny them."

"The principle has become axiomatic in the law of corporations, and by no tribunal has it been applied with more firmness and vigor than by this Court."

"The bank selects the teller, and places him in a position of great responsibility. Persons having no voice in his selection are obliged to deal with the bank through him. If, therefore, while acting in the business of the bank, and within the scope of his employment, *so far as is known or can be seen by the party dealing with him*, he is guilty of misrepresentation, ought not the bank to be responsible?"

The case of the *New York & New Haven R. R. Co.* v. *Schuyler*, 34 New York Rep. 30, was also cited to the same purport. If the idea that, because the agent of the bank was guilty of a gross individual fraud toward the plaintiff, she should be deprived of her right to hold the corporation responsible for his acts within the general scope of his authority, through which he was able to commit the fraud, were to prevail as law, the whole line of authorities, including *R. R. Co.* v. *Schuyler*, 34 N. Y. 30, *The Merchants' Bank* v. *State Bank*, 10 Wall. 604, and many others, were decided wrong. It is no excuse for the bank that its cashier cheated the plaintiff, as well as the bank itself, by issuing spurious stock. The principle on which the plaintiff's claim is founded, is plain enough. But it seems to be supposed that the plaintiff should be excluded from the benefit of it, because the cashier was the brother of her husband, and because her husband, in the original transaction of investing her money in the certificates of stock, acted as her agent. Neither the pleadings nor the evidence show her in any manner cognizant of the misconduct of the cashier in issuing the fictitious certificate, or consenting thereto.

The certificate of stock, issued as this was, under the

signatures of the president and cashier, was as binding upon the bank as if it had been done by special resolution of the board of directors. *R. R. Co.* v. *Schuyler*, 34 N. Y. 64.

If put upon inquiry, where should the plaintiff go for information but to the authorized agent of the corporation, the agent put forward by the bank to those who dealt with it, as its organ?

4. It is said that no case is made against the defendant, "because the plaintiff had *no privity with it.* That she was neither a subscriber to original stock, nor, upon that theory, was she in the position of one who had purchased and surrendered a certificate for transfer. That a party to whom she had paid money told her that he made such surrender on her behalf does not affect the bank. The representation was not made upon its behalf."

But the certificate itself was a full and complete representation, a representation on which she had a right to rely. When she had ascertained that the names of these officers of the bank were genuine signatures, she could well rely on the validity of the certificate, and hold the bank itself responsible. If she could not rely on the representation of the cashier on that subject, she could rely on nobody. The only way to communicate with a corporation, is through its officers or agents.

We claim, then, that the plaintiff had a legal and a just cause of action, as stated in the petition:

That it was not barred by the statute of limitations, she being a married woman.

That, by the erroneous ruling of the Circuit Court, the statute of limitations became a controlling issue on the trial, and that evidence which would have been competent and available under the replication of coverture but for

that error, could not be available under either of the issues, as the pleading stood when the case was tried.

That this error has not been waived, and the Court can not say, judicially, that it has not been prejudicial to plaintiff.

TAFT & LLOYD,
For the Plaintiff in Error.

OFFICE SUPREME COURT U. S.
FILED
DEC 21 1881
MCKENNEY, CLK.

Peter G. Thomson, Arcade Bookstore, Cincinnati.

Supreme Court of the United States.

OCTOBER TERM, 1881.

CAROLINE A. MOORES,
Plaintiff in Error.

vs.

THE CITIZENS NATIONAL BANK, OF PIQUA, OHIO.
Defendant in Error.

No. 205.

BRIEF FOR DEFENDANT IN ERROR.

W. M. RAMSEY,
Attorney for Defendant in Error.

Supreme Court of the United States.

BRIEF FOR DEFENDANT IN ERROR.

CARRIE A. MOORES,
Plaintiff in Error.

against

THE CITIZENS NATIONAL BANK, OF PIQUA, OHIO.
Defendant in Error.

The action was brought in the Circuit Court to recover damages for the wrongful transfer of $9,100 of the capital stock of the Bank to G. V. Dorsey, for the use of the Bank itself, being stock standing in the name of R. B. Moores upon the stock registry, but which he had sold to plaintiff on July 15, 1867, and for which she held a certificate, issued to her by the President and Cashier. Plaintiff alleged that Moores, from whom she purchased the stock, represented to her that he had caused the number of shares in question to be transferred from his name to her own

upon the books of the bank, which representation was false. She alleges that she did not know until 1873 that she was not duly registered as a shareholder, and that at that time she demanded that she should be recognized as such by the Bank, or that her money should be refunded, with interest from the date of such demand, which was refused. She makes no allegation as to the date of the transfer of the stock from Moores to Dorsey.

The second amended petition must be regarded as the sole statement of the plaintiff's cause of action. Under the Ohio practice, an amended petition supersedes all preceding petitions.

The cause was tried upon all the issues joined before the Court, without the intervention of a jury, and judgment rendered for the defendant.

There are no special findings, and the Court has repeatedly held that it cannot examine a bill of exceptions, setting forth the testimony, to determine whether the judgment was right or wrong.

Milhall vs. *Keenan*, 18 Wall. 342.

Twombly vs. *R. R. Co.* 100 U. S. 78.

It appears by the record that the defendant demurred to the second amended petition upon the ground that the alleged cause of action did not accrue within four years. *This demurrer was overruled.* The bar of the statute may

be raised by demurrer under the Ohio code. Defendant then filed its answer, making the statute its first ground of defense. Plaintiff replied to this plea: 1st. Coverture; 2d. Denial that the cause of action accrued within four years.

To the first ground of replication defendant demurred, and the demurrer was sustained. The cause then proceeded to trial, resulting in a *general finding for the defendant upon all the issues.*

Plaintiff in error, without a special finding, without a bill of exceptions, and without any claim that the issues made in the answer were insufficient to justify the judgment if found in favor of the defendant, now seeks a reversal upon the sole ground that the Court erred in its action upon the demurrer to the replication of Coverture to the plea of the statute of limitations. To this claim we answer:

1st. That the Court did not err.

2d. That plaintiff was not prejudiced.

3d. The first replication was waived by proceeding to trial upon the second.

4. The Court cannot examine the question without a special finding.

5. All the issues having been found for the defendant, *including the plea of payment*, and a general denial, the

replication to which the demurrer was sustained was wholly immaterial.

First : There was no error.

The demurrer was based upon the theory that the Act of the Ohio Legislature, authorizing a *feme* covert to sue and be sued, touching her separate estate as if she were a *feme sole*, thus removing her disability, repealed the disability clause of the statute of Limitations as to her. The 28th section of the code of Ohio, in force at the date of the commencement of the action, was as follows :

"Where a married woman is a party, her husband must be joined with her, except, that when the action concerns her separate property, or is between herself and her husband, she may sue, or be sued alone, and in every such case her separate property shall be liable for any judgment rendered therein against her, to the same extent as would the property of her husband, were the judgment rendered against him. But in no case shall she be required to prosecute or defend by her next friend."

Under this state of the law, the Superior Court of Cincinnati, in General Term, in 1871, held that the Statute of Limitations ran against a married woman, as to an action for damages for personal injuries. The syllabus is as follows :

"The clause in the code, which saves from the statute

of limitations, married women, until after their disability is removed, is constructively repealed, *so far as such action is concerned*, by the subsequent statute giving married women the right to sue alone for personal injuries at any time during Coverture."

Ong vs. *Sumner*, 1 Cin. Sup. Ct., page 424.

The District Court of Hamilton County, subsequently followed this ruling in the case of Wilmot *vs.* Friend, not reported, a cause in which the writer was of counsel. The Supreme Court of the State has not yet passed upon the question, but left it open in *R. R. Co.* vs. *Cobb*, 35th Ohio St. 94.

Outside of Ohio, authority in support of the proposition is found in

Kibbe vs. *Ditto*, 93 U. S., 674.

Brown vs. *Cousens*, 51 Me. 310.

Bell vs. *Ballard* 52 Barb., 141.

In *R. R. Co.* vs. *Cobb*, *supra* the Supreme Court of Ohio appears to have held that, assuming the rule to be as we have claimed, still the plaintiff in an action would be entitled to the full statutory period for bringing her action after the repeal of the disability clause. We have understood the rule to be that statutes of limitation may be repealed, the repeal applying to existing causes of action, provided only that reasonable time were allowed in which the actions might be brought.

Terry vs. Anderson, 95 U. S. 628.

SECOND: *Plaintiff was not prejudiced.*

1. The statute of limitations had no bearing upon the case. The only portions of the statute to which it will be necessary to refer are the third and fourth paragraphs of Sec. 4982 Rev. Statues of Ohio, page 1212 Rev. St. The entire section is a literal re-enactment of the 15th Sec. of the Code, in force when this action began. The paragraphs referred to are as follows:

"Within four years:

* * * * * * *

"An action for an injury to the rights of the plaintiff, not arising on contract, and not hereinafter enumerated.

"An action for relief on the ground of fraud; but the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud."

The case made in the petition is governed by one or the other of the above provisions. If it be an action for a wrongful transfer of shares belonging to plaintiff, as we understand it to be, then it is "an action for an injury to the rights of the plaintiff, not arising upon contract," and is barred in four years from the date of the wrongful transfer. The precise nature of the injury is shown by the discision of this Court in *Lanier* vs. *Bank*, 11 Wall. 369. and the cases cited from 30th Conn. and 34th New York. It was a *conversion* of plaintiff's property, by the Bank, to

its own use. The statute of limitations began to run from the date of such conversion. What was that date? The pleadings do not show the date, *but they do show that it was less than four years next preceding the date of the action*. The defendant alleged in its answer that the action accrued without the four years; the plaintiff replied, *under oath, that it accrued within four years*. If it accrued within four years it is immaterial whether it falls within the first or second paragraph. Shall the plaintiff be now heard to allege that her cause of action did accrue more than four years before the action was brought? To do so it is to permit her to contradict the only declaration of the record upon the subject, and that one a sworn declaration which was made by herself in the course of the proceeding below?

Of course, if it appears upon the pleadings that the plaintiff's action was not barred, the question of Coverture, in its relation to the statute, did not arise, and the ruling in question was wholly immaterial. If immaterial, it can not be the predicate of error in this Court.

R. R. Co. vs. *Howard*, 13 How. 307.

Mining Co. vs. *Taylor*, 100 U. S. 37.

Dufan vs. *Couprey*, 6 Pet. 170.

But 2d, it is claimed by counsel for plaintiff in error that the petition contains an averment that the certificate issued to her "was in fact an over-issue of stock," "and,

therefore void, which was a fraud upon the plaintiff and was fraudulently concealed from her by the officers of the bank." (Plff's brief, p. 2).

If this be so, the action was one "for relief on the ground of fraud." and the statute did not begin to run until discovery, which plaintiff alleges was not made until 1873.

The term "relief" in the code is not confined to equitable actions, or such actions as were, prior to its adoption, cognizable only in Courts of Equity.

Sec. 3 of the code, (4971 Rev. St.) provides that "there shall be but one form of action, which shall be known as a civil action." Sec. 85, (Rev. St. 5060), provides that the first pleading in every action shall be a petition, which shall contain "a demand of the *relief* to which he party supposes himself entitled;" and, "if the recovery of money is demanded, the amount shall be stated," etc.

This is conclusive that the term relief applies to every action under the code.

But the plaintiff's petition will not bear the construction to which we have thus referred. There is no allegation that the certificate was invalid. It is alleged that Moores represented himself to be an owner of more than $9,100 of the shares, and it is not alleged that this representation was untrue. It is alleged that he appeared upon the registry to

be an owner as he had alleged. It is alleged that, while this state of fact existed, plaintiff bought and paid for the shares, for which she received the certificate from the proper officers of the Bank. The petition then proceeds as follows; (R. 9.)

"And the plaintiff further says that *after* the issuing to the plaintiff of said certificate, as aforesaid, the defendant permitted the said Robert B. Moores to make on its transfer book, transfers of all the stock owned by him, or standing in his name, as owner, upon the books of said corporation, to the said G. Volney Dorsey, President of the defendant, for the benefit of said defendant, leaving no stock on said books in the name of said R. B. Moores to be transferred to plaintiff." It adds, "and the defendant refused, and now refuses, to recognize the plaintiff as owner of said stock, or any part thereof, or to recognize the validity of said certificate." In the preceding paragraph, it is alleged that plaintiff supposed said certificate to be valid, until 1873, when she learned, for the first time, that "defendant disputed its validity, denied that any transfer of stock had been made to her upon its books, and "refused to recognize her as an owner of stock in said corporation."

All of this falls very far short of alleging the invalidity of the certificate issued to her. The only allegation as to the falsity of any representation, written or verbal, made

to plaintiff, is that which relates to the statement of Moores that he had made a transfer on the books. A careful analysis of the petition will show that we correctly construe it. Thus analyzed, it appears:

1st. That on June 15, 1867, Dorsey was President, and Moores Cashier.

2d. Moores represented that he owned a large amount of stock.

3d. That he appeared upon the stock books as owner of more than $9,100.

4th. That plaintiff purchased from him $9,100 and paid for it.

5th. That he frauduently represented that he had transferred $9,100 to her upon the books of the bank.

6th. That Dorsey and Moores issued new certificates in due form.

7th. That afterward, at a date not given, (but shown by the reply to have been within four years next preceding the date of the bringing of the action,) all of Moores stock was transferred to a trustee for the Bank.

8th. In 1873 the Bank disputed the validity of said certificate, and refused to recognize her as a shareholder.

Having alleged that Moores represented himself to be the owner of the stock, that the books of the Bank showed him to be such, and that the President and Cashier issued

to her a certificate in due form, and having failed to allege either the falsity of his representation, the falsity of the books of the bank, or the invalidity of the certificate, it must be assumed that the statement, the books, and the certificate were true. "*Omnia praesumuntur rite acta.*"

That Moores falsely stated that he had made a transfer upon the books was *wholly immaterial.* If he sold her genuine stock, and the fact was known to the officers of the Bank, who issued to her a certificate, she then became a shareholder, and the legal cause of her injury was not in the omission to make a transfer, but in making the subsequent transfer to the bank itself. And, the Bank could not take such transfer with knowledge of the facts. She could have compelled the Bank, by mandamus, to transfer from its trustee to her the shares which she had bought from Moores. Or, if the writ were refused her, it would be upon the ground that she had an adequate remedy at law.

We claim, therefore, upon this branch of the argument:

1st. That plaintiff's cause of action was the wrongful transfer to the Bank of genuine shares belonging to her; or,

2d. That if this be not so, her action is one for "relief upon the ground of fraud."

Upon either construction, the action was not barred, and the plea of coverture wholly immaterial.

The above considerations will be sufficient to dispose

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The above considerations will be sufficient to dispose

of the plaintiff's writ, even if the Court should be of opinion that the cause is to be governed by the principle established by *Deery* vs. *Cray*, 5 Wall. 795, and *Smiths* vs. *Shoemaker*, 17 Wall, 639, to-wit: "That while it is a sound principle that no judgment should be reversed on error, when the error complained of worked no injury to the party against whom the ruling was made, it must appear so clear as to be beyond doubt that the error did not and could not have prejudiced the right of the party."

But, we apprehend that that principle applies only to the class of cases to which the two authorities above referred to belong, to-wit: cases in which the error occurred upon the trial. Of course it is difficult to determine the effect upon the mind of the Court or jury of the erroneous admission or rejection of testimony. But no such consideration applies to the ruling of the court upon the pleadings. And it is certainly the rule of this Court that one complaining of such error must show prejudice, as well as error. The decisions of the Court seem to require that a suitor who desires to secure the review of the action of the lower Courts upon the pleadings, must, at least, present a bill of exceptions, showing that the error either did, or might have done him an injury upon the trial. Hence, pleading over, after action upon a demurrer, waives the demurrer.

Stanton vs. *Embry*, 93 U. S. 548.
and authorities cited.

And, in *Bell* vs. *R. R. Co.*, 4 Wall. 598, the court say that where there has been a plea to the merits and a trial had, "all antecedent irregularities are waived." The principle manifestly asserted here is that, when there has been a trial upon the merits, the judgment will not be reversed unless a record shall be presented, showing *error in the conduct of the trial.*

Indeed, it is doubtful whether the Act of March 3d, 1865, now the 700 Sec. of Rev. St. does not limit the power of the Court to the examination of the record of the trial alone.

A party against whom an erroneous decision has been made touching the pleadings, may stop, and submit to adverse judgment, taking his exception, and prosecuting a writ of error. If, however, instead of so doing, he subsequently goes to trial, how can the Court be advised whether that error prejudiced him, without a bill of exceptions showing that which actually took place at the trial? In the present cause, for illustration, there was a plea of payment. *Non constat*, but that this plea was sustained. Can the plaintiff, producing a record which shows a judgment in favor of defendant upon that issue, be heard to argue a question relating to the Statute of limitation? She should, at least, be required to show that the Statute was held a bar, or that no other valid defense was established against

her. We will advert to this aspect of the cause under another head.

A party complaining of the erroneous rejection of evidence, must show, not merely the question, but the expected answer; and one complaining of the admission of evidence must show enough of the evidence given to enable the Court to see, at least, that he might have been prejudiced.

Worthington vs. *Mason*, 101 U. S., 149.

But, 3d: The record show that plaintiff was not prejudiced by the ruling upon the question of Coverture, *because there were other defenses,* which sustain the *judgment, and these were found for defendant.*

Defendant pleaded: 1st, Statute of Limitations; 2d, payment by Wm. B. Moores; 3d, (R. p. 17), General denial.

The record shows all the issues found for the defendant. This Court has no jurisdiction to examine the testimony to see whether the evidence justified the findings. It is then to be taken as conclusive that the transaction was found by the Court to be as alleged in the second defense (R. p. 12), to-wit: a transaction between plaintiff, her husband, and her husband's father and brother, with which the Bank had no connection, and that, in addition to these facts, the father, W. B. Moores, had repaid the plaintiff the full amount of money which she had parted with under the

agreement. If so, the Statute of Limitations had nothing to do with the result, as the plaintiff had no cause of action to be barred. The same is true as to the issue made by the 3d plea, which was in substance, a general denial. These ssues being found for defendant, the question of Coverture became immaterial.

In *Clearwater* vs. *Meredith*, 1 Wall. p. 42, the Court held that one sufficient plea having been sustained against the plaintiff, all other pleas became immaterial.

Evidence improperly admitted upon one issue, is not ground for reversal, where other conclusive issues were found against the party complaining. *Hodge* vs. *Town* of *Bennington*, 43 Vt. 450.

We are somewhat surprised that the learned counsel for plaintiff in error should argue that there was no evidence tending to show the truth of the second and third defenses: 1st. because the Court will not examine the record to ascertain whether there was such evidence, and 2d. because there was evidence tending to sustain both defenses:

1st. As to repayment of $9,100. Plaintiff, (R. 56), testifies that her husband acted for her in paying for the stock; that she knew that her husband owed his father $20,000, and that the interest on the $9,100 was regularly offset against the interest on the $20,000. Contract, Exhibit (B. p. 54) was admitted to be the contract under which the

money was paid. Jno. B. C. Moores, plaintiff's husband, admits that he settled the entire debt by balancing it against the same amount of his debt to his father. (R. p. 52.) It is quite true that plaintiff denies knowledge of this part of the transaction, but it was a question for the Court to determine upon all the facts and circumstances. 2d. As to plaintiff's knowledge of the rules of the Bank as to shares, the rule in question is shown, in express terms, upon the face of the certificate set forth in her petition. Her knowledge is also shown by the allegation that R. B. Moores told her that he had made a transfer upon the books. 3d. As to R. B. Moores ownership of stock, July 15, 1867, which it is said, "was the gist of the third defense," That defense called for proof from plaintiff. But R. B. Moores testifies (p. 21) that his 275 shares were placed in the hands of Moores & Co., Cincinnati, to be used as collateral, prior to July 15, 1867; that 115 shares were given to Merchants Bank, in May, 1867; 50, to A. G. Burt & Co., 40, to Cormany, and 70, to Evans, "in the spring and summer of 1867." Dr. Dorsey acquired all of this stock by transfers from those persons (p. 28). This tended to show that R. B. Moores had transferred his shares prior to July 15, 1867, and if he delivered the certificates, the title passed from him without transfer upon the books.

Bank vs. *Lanier*, 11 Wall. 369.

In this connection, the authorities to the effect that this Court will not entertain jurisdiction of a cause, from a State Court, under the 25th Section of the Judiciary Act, although the record shows that a Federal question was involved and decided in the Court below, if it also appear that there were other issues upon which the Court *might have* placed the judgment, are quite pertinent.

Kennebec R. R. vs. *Portland R. R.* 14 Wall. 23.

Steines vs. *Franklin Co.* 14 Wall. 15.

The Court is now asked to find that the Circuit Court held that the plaintiff had a cause of action, and that it was barred by limitation. If such were not the law, it is to be presumed that the Court, on the final hearing did not so decide. Especially is this true in the present case, as the Court did overrule defendant's demurrer to plaintiff's petition, which demurrer was based upon the statute of limitations. (R. 11.)

For the reason, then, that there were other pleas, sufficient to sustain the judgment, the plaintiff was not prejudiced.

THIRD: The first replication was waived by proceeding to trial upon the second.

The second replication was sufficient. It denied that the cause of action accrued within the four years. Had the plaintiff replied coverture alone, and, upon demurrer

being sustained, filed the second replication, and ~~went~~ to trial, she would, undoubtedly, have been held to have waived any error in sustaining the demurrer. Can it make any difference that the two matters of replication were filed at the same time, instead of one following the other?

Clearwater vs. *Meredith*, 1 Wall. 42.

Stanton vs. *Embry*, 93 U. S. 548.

Aurora vs. *West*, 7 Wall. 93.

Marshall vs. *Vicksburgh*, 15 Wall. 149.

FOURTH: The Court cannot examine the alleged error in the absence of a bill of exceptions showing that which occurred at the trial.

Suydam vs. *Williamson*, 20 How. 432.

Ins. Co. vs. *Folsom*, 18 Wall. 237.

It is argued by plaintiff's counsel, (Brief, p. 10), that, "after defendants demurrer was sustained, all evidence of the negligence or fraud of the defendant, charged in the petition as occurring more than four years before the commencement of the action, became irrevelant in the case, and was necessarily either not admitted, or excluded from consideration by the Court below." We answer:

1. There was no "negligence or fraud" charged as "having occurred more than four years before the commencement of the action." No acts of "negligence" are alleged at all.

2. If fraud were charged, its discovery was denied, and, hence the Statute would not run.

Again, (Brief, p. 10) counsel say: "The only controversy of fact in the Court below was over the issue raised by the defense of the statute of limitations." We do not clearly comprehend the meaning of this statement. The bill of exceptions shows that the merits of the case, *upon all the issues*, were fully heard and decided. The third defense, as amended, presented the broad question whether, *upon all the testimony*, plaintiff was entitled to recover. In point of fact, the Court found that she was not so entitled. In this respect, the record of the judgment is entirely correct.

Indeed, the defendant was entitled to judgment upon the pleadings. The second defense, (R. 12) sets out the contract under which plaintiff attempted to acquire shares as security for a loan of money to her husband's father and brother in Cincinnati. The reply admits that this was the agreement (R. 15). If so, upon the very face of the transaction, it is one with which the defendant had no connection. Not only was it without the scope of the agency of R. B. Moores, as Cashier, but it does not appear that either party could have understood that he was acting as Cashier. He did not attempt to bind his principal. In issuing the certificate, he must have transcended his duty, and the

plaintiff must be held to a knowledge thereof, for the following reasons:

1. One who attempts to procure a certificate of Bank shares, other than original shares subscribed for, must surrender a certificate for a corresponding amount. If he do not, he is not entitled to a new certificate. If he procures the Cashier, *in his individual capacity*, to make such surrender and transfer for him, the Cashier is then his agent.

2. A certificate of stock is but the evidence of the holder's ownership in the corporate property. An agent of a corporation can not bind it by his representations as to the extent of his *individual* interest in the property of his principal. Persons dealing with him individually are put upon inquiry, as in the case of a partner, seeking to dispose of the negotiable paper of the firm, payable to his individual order.

Claflin vs. *Bank*, 25 N. Y. 293.

3. Shares of stock are not negotiable, and the purchaser takes only the title of the seller. Moores had no title.

Bank vs. *Lanier*, 11 Wall. 369.

Mechanics Bank case, 13 N. Y. 599.

The case of *Schuyler* vs. *R. R.* 34th N. Y. 34, proceeded upon the ground of *estoppel in pais*. This means fraud, or its legal equivalent, gross negligence.

Henshaw vs. *Bissell*, 18 Wall. 271.

Brant vs. *Coal Co.*, 93 U. S. 326.

Plaintiff's petition does not allege a wrongful issue to her. If it had done so, it would have made no case against defendant, because she had *no privity with it*. She was neither a subscriber to original stock, nor, upon that theory, was she in the position of one who had purchased and surrendered a certificate for transfer. That a party to whom she had paid money told her that he made such surrender on her behalf does not affect the Bank. The representation was not made upon its behalf.

The plaintiff in error seeks to obtain a re-trial of the merits upon the sole ground that the Court erred upon an abstract legal proposition, which was wholly immaterial, and the error, therefore, if any, wholly inconsequential. To give her application even an air of plausibility, she is obliged to argue that her cause was other than that alleged in her petition, and that her alleged right of action occurred at a date more than four years prior to the commencement of the action, when, in her reply, she had sworn the contrary. She is obliged to argue that the Court did, or might have held that the cause of action alleged by her was barred by the four years limitation, although the record shows that the Court decided the contrary at least upon two occasions:

1st. In overruling defendants demurrer to the petition, based upon the Statute, (R. p. 12), and,

2d. In overruling defendant's demurrer to the second ~~Court~~ Count of plaintiff's reply to the plea of the statute. (R. p. 16).

Of course that demurrer would have been sustained, notwithstanding the reply was a denial that the cause of action had accrued within four years, if the petition had shown that it did accrue more than four years before.

Had the Court at a later change in the proceedings, changed its opinion, and held that the action was barred, it would have been easy to preserve a record of that change, and the learned counsel for plaintiff in error would not have omitted to do so.

WM. M. RAMSEY,

Attorney for Defendant in Error.